

What is a Future Act?

A “Future Act” is a proposed act on land or waters that affects native title rights and interests. This can include:

- Exploration;
- Mining;
- Prospecting;
- Building public infrastructure;
- Tourist resorts;
- Water licenses;
- Some legislative changes; and
- Some lease renewals.

How Does the Future Act Process Work?

Native title claim groups have the right to:

- Be notified;
- Comment;
- Be consulted;
- Object; or
- Negotiate about Future Acts which other parties want to undertake within the native title claim area.

These other parties are sometimes referred to as “proponents” or “grantees”. The rights which a native title claim group has when a Future Act is proposed are called “procedural rights” and are secured by the native title claim group after the native title application has been filed and registered. These procedural rights can be exercised by the native title claim group while their native title application is being processed.

What Type of Rights Can Be Exercised?

Native title claim groups do not have the right to negotiate over every Future Act occurring within the native title claim area. The type of procedural rights which the native title claim group can exercise will vary depending on the type of Future Act that is being proposed.

Development of Government buildings, public services or facilities

Generally speaking, when this type of activity is being undertaken the Government must send a notice to the traditional owners (usually through NTSCORP) and the native title claim group will have the right to comment about the Future Act.

Mining, exploration, prospecting, gas and petroleum exploration/extraction

Generally speaking, when this type of activity is being undertaken the Government must notify the traditional owners (usually through NTSCORP) and the native title claim group will have the right to negotiate about the Future Act.

What is the Right to Negotiate?

The right to negotiate is a procedural right under the Native Title Act 1993 (Cth) which ensures that Future Acts are carried out validly. It gives the native title claim group the right to have their say about the Future Act. It does not give the native title claim group the power to stop the Future Act being done.

Registered native title claim groups have the right to negotiate about the following types of Future Acts:

- The granting of exploration licences;
- The granting of mining leases; and
- Some compulsory acquisitions.

The right to negotiate does not apply to all Future Acts. For example, native title claim groups do not have the right to negotiate about Future Acts like the construction of public works or management of water.

What Triggers the Right to Negotiate?

The right to negotiate is triggered when the Government issues a “section 29 notice” stating that it intends to grant an interest or do a Future Act that is subject to the right to negotiate. The notice is placed in major newspapers and is sent directly to any registered native title claim groups. The native title representative body for the area (NTSCORP in NSW and the ACT) will also be notified.

People who assert native title rights and interests in an area, but have not yet filed a native title application, have 3 months from the date given on a section 29 notice to file a native title application and another month in which to get registered if they want the right to negotiate about the proposed Future Act.

Who Has the Right to Negotiate?

If the native title application has been filed in the Federal Court and registered by the National Native Title Tribunal, the native title claim group secures procedural rights in relation to the various Future Acts occurring within the native title claim area, including the right to negotiate. A registered native title claim group is sometimes referred to as the “Native Title Party”.

If the Federal Court has made a determination that native title exists in the area, the registered native title body corporate has the right to negotiate about Future Acts occurring within that area.

What is the Negotiation Process?

If the right to negotiate applies, the Government, proponent and registered native title claim group must negotiate “in good faith” for at least 6 months about the proposed Future Act.

The parties negotiate about the effects of the proposed development on the claimants’ native title rights and interests with a view to reaching an agreement about the terms upon which the native title claim group agree that the Future Act can go ahead.

The parties can ask the National Native Title Tribunal to mediate during the negotiations. If the negotiations do not result in an agreement within 6 months following the section 29 notice (or an agreed extended period), any party can choose to ask the National Native Title Tribunal to arbitrate and make a binding decision about whether the Future Act can go ahead and on what conditions.

The Role of NTSCORP Limited

NTSCORP Limited (“NTSCORP”) (formerly NSW Native Title Services Ltd) performs functions under section 203B-BK of the Native Title Act 1993 (Cth) which include:

- Facilitation and assistance;
- Dispute resolution;
- Notification;
- Agreement making;
- Internal review; and
- Other functions.

NTSCORP provides specialised research, strategic development and community facilitation services and engages a legal practice to provide legal services to native title claim groups and traditional owners across NSW and the ACT.

As NTSCORP does not receive an adequate level of funding to provide services to all traditional owners in NSW and the ACT, NTSCORP must prioritise those matters in which it can provide assistance. To ensure decisions about assistance are made in an open and transparent way, NTSCORP considers applications for assistance in accordance with the criteria contained in NTSCORP facilitation and assistance policy.