

Why does Native Title take so long?

Getting native title recognised can take a very long time, sometimes up to 15 years or more. Many people are concerned that while a native title claim is ongoing, elders are passing away, and many of the people who lodge native title claims very sadly don't get to see it through to the end. YMAC shares these concerns, and we constantly work to get the best possible native title outcomes for our clients. People often ask why getting native title takes so long. Here are some of the main reasons:

Research

Connection research takes time because there is so much information to be gathered. The experts writing the reports need to learn about the people, land and culture of the native title claim, in order to meet the State's extensive guidelines and requirements. YMAC staff constantly work on research for all claims.

Often a claim group has to wait until a suitably qualified professional becomes available, and the funds are available for their consultancy fees, before their Connection Report is written.

State Government's Assessment

Once the Connection Report has been given to the State Government, their experts and lawyers go through the report to decide if they think the claim group has native title.

The State's experts need to go through the report carefully, and often come back to the native title group through YMAC to ask for more information. There are a limited number of experts working for the State for all native title claims in WA.

Overlaps and other disputes

The *Native Title Act* generally does not allow any overlaps in native title determination areas and often the State will not agree to progress a claim until overlaps and other disputes between native title groups are settled.

This is always going to be difficult for groups YMAC assists by arranging meetings, research, mediations, on-Country trips and site visits. This also includes anything else that will help Traditional Owners reach an agreement about overlaps.

This may mean claim boundaries may need to be changed for the sake of finalising the native title claim.

These talks should not be rushed and often take a long time to settle. Discussions within a group over issues such as membership of the native title claim can also take time to work out.

Mediation

If the State accepts that a claim group has native title based on their Connection Report, then all parties will work to settle native title by agreement (consent), rather than going to court.

This usually involves discussions about land use, land tenure, extinguishment, and the recognition of native title rights and interests.

Everyone affected by the native title determination can choose to be a part of this mediation process. This always includes the State Government and the native title claim group, and can also include pastoralists, commercial fishers, mining lease holders, and local governments. Reaching agreement with all of these groups can take time to work through.

Trial

If agreement by mediation cannot be reached, the native title claim can go to trial in court.

There is a lot of work that needs to go into preparing for the trial, and there are only so many experts and qualified professionals who are available to do it.

Elders and experts who give Connection evidence need to be prepared to be cross-examined by the lawyers for the State. This experience and process can be difficult for many people.

Resourcing

In all stages, the limited amount of funding and people to do the work plays a part.

As a not-for-profit organisation, YMAC relies on the funding we receive annually from the Commonwealth Government for native title work.

Decisions

There are many hard decisions that have to be made along the way, for example, if one claim is sent to trial, there will be less funding for other claims that year.

There is also the consideration of other matters. These matters include mining agreements or negotiations for other developments on-Country.

It is essential for communities to reach their aspirations for the future that YMAC properly resources negotiations.

Trying to get the right balance for mining negotiations and native title recognition is a challenge for every native title group.

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