

What is Native Title?

Native title is the legal recognition of the individual or communal rights and interests which Aboriginal people have in land and water, where Aboriginal people have continued to exercise their rights and interests in accordance with traditional law and custom since before the British asserted sovereignty over Australia. In order for native title rights and interests to be formally recognised under the Native Title Act (1993) Cth, it must be established that:

1. The native title claim group have rights and interests that are possessed under traditional laws acknowledged and traditional customs observed;
2. The native title claim group by those laws and customs, have a connection with the land or water; and
3. That those rights and interests are capable of being recognised by Australian law.

Where Can You Claim Native Title?

Native title cannot be claimed in areas where the law says native title has been extinguished, even if Aboriginal people still have a traditional connection to that land or water.

Areas where you may be able to claim native title include:

- Vacant Crown land;
- National Parks;
- State Forests;
- Crown reserves;
- Some types of non-exclusive leases;
- Land covered by permissive occupancies & licences; and
- Inland waters and the sea.

Native title rights and interests, if recognised, must co-exist with any interests other people have in the same land and water.

Identifying the Native Title Claim Group

Native title is a communal title, and any determination that native title exists should include all of the Aboriginal people who have native title rights and interests in land or water.

The law requires that you use an objective test to identify the members of your native title claim group in your native title application. This can be done by naming every member of your native title claim group but it is most often done by naming the ancestors from which each member of your native title claim group descends.

The native title claim group must be united, or bound together, by their system of traditional law and custom.

Authorising a Native Title Application

The law also requires that your native title application is properly authorised by the aboriginal people who have native title rights and interests in the land or waters that are being claimed. Both the native title application being filed and the applicants nominated to make the application must be authorised by the whole native title claim group.

Decisions to authorise a native title application need to be made according to a traditional method of decision making if the traditional method is appropriate for decisions of that kind. If there isn't a traditional method of decision making, or if it isn't appropriate to use in the native title process, then the native title claim group can adopt another method of decision making, such as discussion and voting.

What sort of evidence is required?

After a native title application is filed in the Federal Court, the registration test is applied by the National Native Title Tribunal and the public is notified that the application has been made.

Following this, the native title application is usually referred to mediation. The approach taken by the state government in mediation is that the native title claim group needs to provide evidence to the state government for assessment before negotiations can begin about any settlement of the application.

Native title claim groups usually need to provide evidence about :

- The identity of the claimants;
- The traditional language of the claimants;
- The claimants' connection to country and responsibilities to country;
- The claimants' social and cultural system – the body of law and custom which is acknowledged and observed;
- The claimants' rights and interests in land and water;
- Traditional activities carried out by claimants on their country; and
- The relationship between the rights and interests and the law and custom of the claimants.

The evidence is usually contained in experts' anthropological and historical reports and in affidavits provided directly by members of the native title claim group.

What Type of Outcomes Can Be Achieved?

A range of outcomes can be achieved through the native title process including:

- Memoranda of understanding (MOUs);
- Future act agreements;
- Indigenous land use agreements (ILUAs);
- Consent determinations; and
- Litigated determinations.

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.