



NEW SOUTH WALES
ABORIGINAL LAND COUNCIL

www.alc.org.au

LAND RIGHTS AND NATIVE TITLE IN NSW

A GUIDE FOR THE COMMUNITY



About NSWALC

This guide is published by the New South Wales Aboriginal Land Council (NSWALC). NSWALC is an independent, non-government organisation established under the *Aboriginal Land Rights Act NSW (1983)* (ALRA) and is the peak body representing Aboriginal peoples in NSW.

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Disclaimer

This guide seeks to provide general information only. While all care has been taken in the preparation of this document, the advice it contains should not be seen as a substitute for independent consideration of the issues and/or legal advice on this subject. For further information please contact NSWALC (contact details above).

Feedback

NSWALC welcomes comments or feedback on this document. Please contact us on the above details.

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I. AN INTRODUCTION TO THIS GUIDE

Accessing and managing lands or Country continues to be a major goal for Aboriginal peoples. In NSW there are two key mechanisms by which Aboriginal peoples can have their rights in land formally recognised – *Land Rights and Native Title*. While these systems are both about formally recognising and providing for Aboriginal peoples' rights, the two systems operate under different laws and differ in the rights they can provide.

Land rights and native title are technical, complex and evolving areas of the law. This introductory guide aims to provide Aboriginal communities with a better understanding of land rights and native title, to assist in their use together to maximise land justice outcomes for Aboriginal people. To this aim, the guide highlights the interactions between the two systems, particularly as native title and land rights can sometimes exist in the same land, to promote collaborative relationships between Aboriginal Land Councils and Native Title groups.

This guide also aims to inform land owners, local government authorities and others about the different legislative systems that provide rights to Aboriginal peoples and to dispel common misconceptions about the history and operation of land rights and native title laws.

For further information about land rights in NSW, please contact NSWALC or visit the NSWALC website www.alc.org.au or contact the Office of the Registrar, *Aboriginal Land Rights Act* or visit their website: www.orala.nsw.gov.au which contains a number of resources, guides and fact sheets.

For further information about native title, please contact the National Native Title Tribunal or visit their website www.nntt.gov.au which contains a number of useful fact sheets, guides and other resources.

Please refer to Sections 7 and 8 of this document for details on where to get further information and assistance and key contacts.

The Glossary in section 9 provides definitions of key terms.

It is important to note that native title is an evolving area of law, with a number of legislative reform proposals underway including a *Native Title Amendment Bill* in Federal Parliament, and an Inquiry by the Australian Law Reform Commission which may change elements of native title law.

A summary of these proposals can be found on the Federal Attorney-General's website at: www.ag.gov.au/consultations/pages/Currentnativetitle reforms.aspx.

2. SNAPSHOT OF LAND RIGHTS AND NATIVE TITLE IN NSW

	LAND RIGHTS	NATIVE TITLE
What is it?	The return of certain Crown lands to Aboriginal peoples as compensation for dispossession and the resulting ongoing disadvantage suffered by Aboriginal peoples.	The recognition of the traditional and customary rights and interests Aboriginal peoples have in lands.
How long has it been around?	A non-statutory NSW Aboriginal Land Council was established in 1977 as an Aboriginal lobby on land rights. The <i>Aboriginal Land Rights Act (ALRA)</i> ¹ was passed by the NSW Parliament in 1983.	Native title was first recognised by the courts in the 1992 Mabo decision. Legislation then followed with the Commonwealth passing the <i>Native Title Act (NTA)</i> in 1993 and the NSW Parliament passing the <i>Native Title (New South Wales) Act</i> in 1994.
Is traditional connection required?	Traditional connection does <u>not</u> need to be established for a land claim to be granted. The ALRA also contains provisions for culturally significant lands to be returned to people with a connection to the place.	Native title will <u>only</u> be determined to exist where Aboriginal people have established to the Federal Court that they have maintained a continuing connection with an area through an acknowledgement of traditional laws and customs.
Who can make a claim?	Aboriginal Land Councils constituted under the ALRA.	A native title claim group's nominated representatives, known as 'the Applicant'. The word Applicant is used even though this will usually be a group of people, not an individual.
What land can successfully be claimed?	Crown lands that are not lawfully being used or occupied, not needed or likely to be needed for residential or essential public purposes and not the subject of a registered native title claim or determination.	Vacant Crown land, National Parks, State Forests, Crown Reserves, some types of non-exclusive leases, land covered by permissive occupancies and licenses, inland waters and the sea.
Does it mean ownership?	Yes, generally full or freehold title to land is granted, though sometimes land may be held in leasehold.	In some cases it can mean rights akin to full ownership. More often, native title is recognised to co-exist alongside other rights and interests in the same area. This can mean access and usage rights are legally recognised, including for camping, hunting, fishing and other cultural activities.
Who holds the rights?	Aboriginal Land Councils constituted under the ALRA.	Either the native title holders or a Prescribed Body Corporate (PBC) holds the title in trust or as an agent
How many claims in NSW?	Since 1983, there have been approximately 36,000 land claims lodged, with 2,473 of these successfully granted. However, there are still approximately 26,000 to be determined.	There have been four determinations that native title exists in NSW and nine Indigenous Land Use Agreements (ILUAs) registered. A number of other section 31 deeds have been reached. There are currently 24 claimant applications and 6 non-claimant applications in NSW yet to be determined. There are 232 determinations nationally that native title exists.



KEY POINTS

Although the relationship between Land Rights and Native Title is legally complex, the following principles generally apply:

- » Land rights and native title may co-exist in land.
- » The granting of an Aboriginal land claim lodged after 1994 will not affect any native title rights.
- » Where native title has been extinguished in land owned by an Aboriginal land council it may be 'revived', but will not restrict the Aboriginal land council's ability to deal with the land.
- » Land claims made over land that is the subject of a registered native title claim or a positive determination of native title must be refused.
- » Aboriginal Land Councils cannot deal with land that has been granted subject to native title unless there is a determination of native title over that land.
- » Native Title claimants and holders may be members of Aboriginal Land Councils and vice versa.
- » Aboriginal Land Councils and Native Title claimants/holders may develop agreements about land subject to both native title and land rights.



3. LAND RIGHTS IN NSW

History

Building on a long history of resistance and protest, the concerted campaign by Aboriginal peoples for the recognition of land rights in the 1970s and early 1980s, resulted in some momentous developments. Firstly, the NSW Aboriginal Land Council (**NSWALC**) was established in 1977, as an independent Aboriginal advocate for the recognition of Aboriginal land rights.² In 1978 the 'NSW Select Committee of the Legislative Assembly upon Aborigines' (also known as the **Keane Committee**) was established, which led directly to the enactment of the landmark *Aboriginal Land Rights Act 1983 (ALRA)* by the NSW Parliament.³

While not the first land rights legislation in Australia, the ALRA provided for broader rights to land as well as unprecedented recognition in statute: *that Land is of spiritual, social, cultural, and economic importance to Aboriginal peoples and that the decisions of past Governments have progressively reduced the amount of Aboriginal land without compensation.*

In recognition of these facts, the ALRA was established principally to return certain Crown lands to Aboriginal peoples in NSW, as compensation for dispossession and the ongoing disadvantage suffered by Aboriginal communities as a result.

The ALRA also established a network of democratically representative Aboriginal Land Councils across the state, to acquire and manage land as an economic base for Aboriginal communities, and a statutory account of compensatory monies to fund their operations.

Aboriginal Land Claims in NSW

As at 30 April 2014, 36,717 Aboriginal Land Claims have been lodged since 1983 however 25,789 of these are yet to be determined. 2,578 successful land claims have been granted.

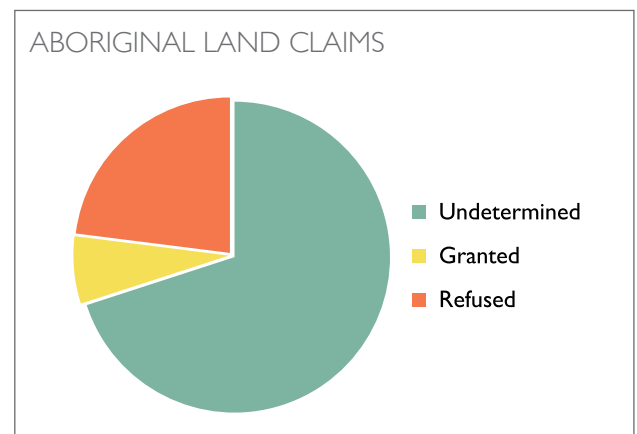


Figure 1 – Aboriginal Land Claim statistics

What can it deliver?

Under the land claims process of the ALRA, claimed Crown land with the following characteristics at the date of claim must be granted:

- It is able to be lawfully sold or leased, or is reserved or dedicated for any purpose;
- it is not lawfully used or occupied;
- it is not land that, in the opinion of a Crown Lands Minister, is needed or likely to be needed as residential lands;
- it is not needed or likely to be needed for an essential public purpose; and
- it does not have a determination that native title exists or registered native title claim over it.⁴

Privately owned land cannot be claimed. A traditional or cultural connection to the land is not needed for the claim to succeed.

As will be explained in more detail below native title and land rights can sometimes exist in the same land.

A successful land claim generally delivers an Aboriginal Land Council **freehold title to land**, which is full ownership of the land. Uniquely to land rights, it also delivers certain limited mineral rights in addition to regular freehold title. An Aboriginal Land Council is generally free to use or deal in the granted freehold land as any other landowner would be. The land can be sold, leased, mortgaged or otherwise used or dealt with, subject to the land dealings provisions of the ALRA.

However, the ALRA contains provisions that do generally require an Aboriginal Land Council to, amongst other things, not deal in their successfully claimed land that may be subject to native title, until a native title determination is made. These provisions are outlined in section 42 of the ALRA. If there is no native title determination in the area, LALCs may seek a determination that native title does not exist in order to deal with the land. This process is referred to as a **non-claimant application** and is further discussed in section 5 below.

Where Crown land is needed for the purpose of nature conservation and the land is of recognised Aboriginal cultural significance, land can be granted to an Aboriginal Land Council and then leased back to the NSW Government for use as a national park or another form of conservation reserve.⁵ Such national parks or reserves are then jointly managed by the NSW Government and Aboriginal Owners⁶, who are Aboriginal people with a cultural association with that particular land. Similar processes are available for land that is part of a travelling stock reserve.

The ALRA also entitles Local Aboriginal Land Councils to make access agreements with land owners or person in control of land to allow **access to land for hunting, fishing and gathering**. Where an access agreement cannot be negotiated, a Court ordered access permit for the same purpose can be sought.

Who is involved?

Any Aboriginal Land Council constituted under the ALRA may make a land claim. This includes NSWALC and any of the 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state.

While established and regulated by the ALRA, all Aboriginal Land Councils are independent, self-funded non-government organisations.

Aboriginal Land Councils have governing Boards, or in the case of NSWALC a governing Council, that are democratically elected by and from their members. Aboriginal Land Councils members are drawn from the adult Aboriginal population living within, or connected to the area within their boundaries. A traditional or cultural connection to an area is not required for membership. In the case of NSWALC, the Council of nine is elected by and from LALC members of nine different regions across the state.



Figure 2 – Map of NSW Aboriginal Land Council boundaries

As well as providing for local and state-wide representation, Aboriginal Land Councils have functions to acquire and manage land, and to protect and promote Aboriginal culture and heritage.

LALCs also have **consultation rights** in relation to Aboriginal culture and heritage as set out in the current NSW Government Aboriginal culture and heritage laws and associated policies.⁷

In addition to NSWALC and LALCs, the ALRA sets out provisions relating to other entities.

The Registrar of the ALRA is an independent statutory officer with responsibility, amongst other things, for registering land claims, for mediating, conciliating and arbitrating disputes concerning the ALRA, and for overseeing LALC elections and membership rolls. The Registrar of the ALRA must also keep and maintain a ‘Register of Aboriginal Owners’¹⁸.

Aboriginal Owners are Aboriginal people who are on the register of Aboriginal Owners and must have a cultural association with an area that comes from the following:

- their direct descent from the original Aboriginal inhabitants of an area; and
- the traditions, customs, observances, beliefs, or history of those original inhabitants.

Aboriginal Owners are primarily involved in the management of jointly managed National Parks, that is, Aboriginal owned parks with lease back arrangements to the NSW Government under Part 4A of the *National Parks and Wildlife Act 1974* (NSW). There are currently six Aboriginal owned parks with Part 4A lease back arrangements in NSW.⁹ Aboriginal Owners also have **consultation rights** in relation to Aboriginal culture and heritage under the current NSW Government Aboriginal culture and heritage laws and policies. The Aboriginal Owners Register is separate from processes set out in the *Native Title Act*.

Other bodies that have roles in relation to the ALRA include:

- **The Minister/s administering the *Crown Lands Act 1989*** who has/have responsibility for determining whether land claims are to be granted or refused.
- **The NSW Land and Environment Court** which has the principal responsibility for determining appeals made about land claim determinations.

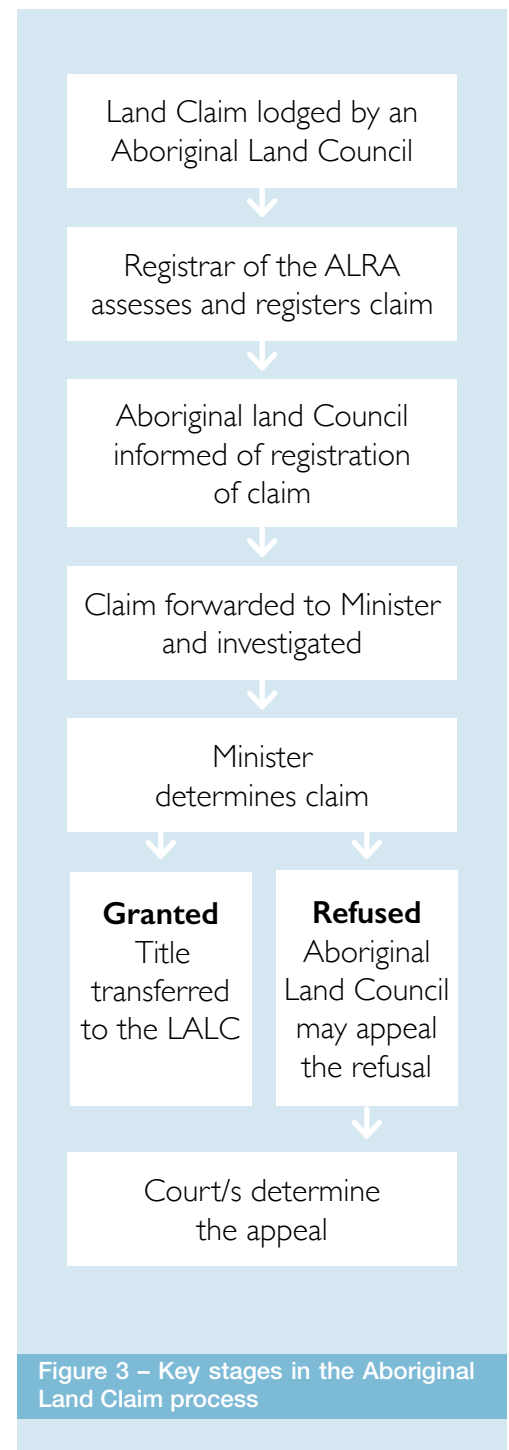
How does it work?

The ALRA prescribes a clear process for making and determining land claims as outlined in Figure 3 below.

An Aboriginal Land Council needs to lodge a land claim with the Registrar of the ALRA, who registers it and then forwards it the Minister administering the *Crown Lands Act 1989*.

Registered land claims are then investigated by the Government, currently by Trade and Investment NSW, before the Minister or Ministers administering the *Crown Lands Act* make a decision on whether the land claimed is claimable Crown land under the ALRA. The limited resources allocated to the investigation of land claims has resulted in lengthy delays and a significant backlog of land claims

If the land is determined to be claimable Crown land, it must be granted to an Aboriginal Land Council.



4. NATIVE TITLE IN NSW

History

With the arrival of Europeans to Australia came the legal fiction of *terra nullius*. This deceit, that Australia was “a land belonging to no one”, was used as legal justification for the imposition of a foreign sovereignty and the very real dispossession of Aboriginal peoples from their lands and waters. Despite the obvious truth of Aboriginal occupation, this fiction persisted for over 200 years, during which time Australian laws denied the inherent rights of Aboriginal peoples to their lands and waters.

The *Mabo* High Court decision in 1992 was the first time that the Australian law recognised the inherent rights and interests Aboriginal people have in land, under a traditional system of law and custom. The *Native Title Act (NTA)* was passed by the Commonwealth Parliament in 1993, and laws ensuring consistency between the Commonwealth and NSW were passed by the NSW Parliament the following year on 28 November 1994. This is a key date in terms of the interaction of land rights and native title as discussed further in Section 5. The legislation provides statutory recognition and protection of native title, and establishes processes for claiming, mediating and determining native title, as well as for reaching agreements for compensation. In practice these processes take considerable time and most claims take many years to resolve.

Native title claims in NSW

In NSW to date four successful native title determinations have been made that native title exists – The Dunghutti People, The Githabul People and Bandjalang People #1 and #2. There are currently 24 native title claimant applications which are yet to be determined in NSW.

In addition, nine ILUAs have been registered. A number of s 31 Deeds in relation to exploration, mining and development have also been reached.

For the most up to date map of native title claims in NSW, please visit the NNTT website:

www.nntt.gov.au/assistance/Geospatial/Pages/Maps.aspx.

What can it deliver?

Native title is the legal recognition of traditional communal, group or individual rights and interests which Aboriginal and Torres Strait Islander peoples have in lands and waters. What rights and interests may be recognised will depend on the nature of traditional laws, customs and usage of an area.

Native title is sometimes referred to as a ‘bundle of rights’. The content of that bundle of rights will depend on the native title holders’ traditional laws and customs and Australian law’s capacity to recognise the rights and interests they hold. It may include the right to possess and occupy an area to the exclusion of all others, often called a right of exclusive possession. Exclusive possession can only be recognised over limited parts of Australia, such as unallocated or vacant Crown land and certain areas already held by, or for, Aboriginal or Torres Strait Islander Australians.

Over other areas, the native title bundle is most likely to be a set of non-exclusive rights. This means there is no right to control access to, and use of, the area. Examples of non-exclusive rights include the right to access, live or camp on the area, hunt, fish, gather food and bush medicine, visit and

protect important places, or teach law and custom on country. These non-exclusive rights often co-exist with other rights over the land, such as leasehold interests, National Parks and Crown Reserves.

Native title is principally resolved through a determination of the Federal Court recognising that native title exists or determining that it has been wholly or partially extinguished. This is usually made following the agreement of all the parties to the claim, which is called a **Consent Determination**, but in some cases is made following a Court hearing.

The Federal Court will only make a determination that native title exists where Aboriginal peoples can establish they are the traditional owners for the particular area claimed. To establish this, the native title claimants must show they have maintained a continuing connection with the area through the acknowledgment and observance of traditional laws and customs since the time of first European settlement in the area.

Native title cannot be sold, but may be surrendered to government. It is also vulnerable to extinguishment, as discussed below.

Native title claims can also be successfully resolved through the negotiation of an agreement, such as an Indigenous Land Use Agreement (ILUA) or a Section 31 Deed which is an agreement relating to future acts, discussed further below. Agreements such as these are legally binding and may include rights not otherwise available under a native title consent determination, including in relation to employment, economic development, freehold land transfer and compensation.

Extinguishment of native title

Extinguishment of native title occurs when native title rights and interests can no longer be recognised by Australian law, generally as the result of past government action which is inconsistent with the continuing practice of those rights and interests in relation to an area of land or water.

There are some past Government actions which the Parliament has confirmed extinguish native title. These are known as Previous Exclusive Possession Acts (also referred to as **PEPAs**) and are set out in section 23B and Schedule 1 of the NTA. Whether other Government actions extinguish native title will depend on the details of each action.



Once native title has been extinguished, it cannot generally be recognised again, although the NTA allows extinguishment to be disregarded in certain circumstances.¹⁰ Relevantly for LALCs, section 47A of the NTA allows for extinguishment of native title to be disregarded in respect to certain kinds of land held by and for the benefit of Aboriginal or Torres Strait Islander peoples, as further discussed in section 5 below.

Mechanisms exist through which native title holders can be compensated for impacts on or extinguishment of their native title rights; for example where the actions of government have extinguished native title after the enactment of the *Commonwealth Racial Discrimination Act 1975*, compensation may be payable for such actions.

Who is involved?

For native title to be recognised, Aboriginal individuals or groups must prove the existence of rights and interests in an area of land or water arising out of their traditional law and customs, and from which they have an uninterrupted connection to the land or waters.

A native title claim group must prove it is a part of society united, or bound together, by its system of traditional law and custom. The **'claim group'** are all the Aboriginal people who claim to hold native title in a particular area and who authorise representatives (known as the **'Applicant'**) to make a native title claim. Together the claim group and the Applicant are often known as the 'native title claimants'.

SUMMARY OF KEY OUTCOMES THAT MAY RESULT FROM A NATIVE TITLE CLAIM

Native title determination

A native title determination is a decision made by the Federal Court that native title does or does not exist in relation to a particular area of land or waters. As outlined above, a determination that native title does exist may recognise the native title holders' exclusive rights (rights to occupy and possess the land to the exclusion of all others) or non-exclusive rights (such as the right to hunt or fish) over an area.

ILUAs– Indigenous Land Use Agreements

An ILUA is an agreement about the use and management of land and waters between native title groups and others. They are sometimes made alongside a court determination but are often made through negotiations that do not involve the courts. They are voluntary, legally binding, negotiated and flexible to specific circumstances and can be negotiated over areas where native title has, or has not yet, been determined. Examples of some outcomes from ILUAs include:

- » consulting with Aboriginal peoples about planning decisions,
- » regenerating native species relating to bush medicine,
- » restricting vehicle access to protect cultural sites,
- » job opportunities and training programs,
- » allowing developments on land to proceed separately from an application for a determination of native title or before a determination of native title is reached.¹¹

If certain conditions have been met, the Native Title Registrar registers the ILUA on the Register of Indigenous

Where native title rights have been determined to exist by the Courts over an area, the people who have those rights are '**Native Title Holders**' for that area. Native title holders are generally required to form a corporation (a PBC) that will either act as the native title holders' agent or will hold the native title rights and interests in trust.¹³

Note: While the term 'traditional owner' is commonly used to refer to native title claimants or holders it is not defined in the Native Title Act. As such, the term 'traditional owner' may have different meanings in different contexts. While it is acknowledged that the use of the term 'traditional owner' is sometimes preferred, for the purposes of this guide the terminology and definitions contained in the ALRA and NTA are predominately utilised.

The Federal Court of Australia is responsible for the management and determination of native title determination applications and compensation applications. These applications must be filed with the Federal Court.¹⁴

The Court has wide powers in native title cases. It can:

- refer native title and compensation applications for mediation to the National Native Title Tribunal or to another mediator;
- decide who are the 'parties' (the people involved in a case);
- order adjournment of proceedings to allow time for the parties to negotiate;
- make orders to ensure that overlapping native title applications which cover the same area are dealt with in one proceeding.

Land Use Agreements. The importance of the registration of an ILUA is that anything done to which the ILUA relates is valid for the purposes of the NTA.¹²

Future Acts Agreements

A future act is an act that, although otherwise legal, will affect native title, such as a freehold grant or the grant of leases or licences for the purpose of exploration, mining, building public infrastructure or using water.

Because native title claims can take many years to resolve, the NTA provides a mechanism by which future acts may be done provided there is compliance with the NTA. Depending on the nature of the future act this can involve providing native title parties with a range of rights, from a right to notice, procedural rights as if they held ordinary title or a right to negotiate. These mechanisms are commonly known as the 'future act process'.

The parties, usually the native title holders and the project proponent (the person or corporation wanting to do the act, such as a State or Local Government, or mining company), negotiate about the circumstances in which the project proponent can proceed. For some future acts (most commonly the grant of mining interests), the proponent must comply with what is known as the 'right to negotiate' with respect to any native title holders or registered native title claimants for the land. The right to negotiate can result in agreements which may involve compensation to the PBC or native title claimants for the effects of the doing of the act.

The right to negotiate does not allow the native title holders or native title claim group to refuse to consent to the doing of the act. Where the parties are unable to reach agreement, a party can apply to an arbitral tribunal (in NSW, the National Native Title Tribunal) for a decision as to whether or not the act can occur.

The National Native Title Tribunal is an independent statutory body with the following roles and responsibilities, amongst others:

- Making administrative decisions about the registration of claims and ILUAs.
- Maintaining the registers of native title determinations, of native title claims, and of ILUAs.
- Providing assistance to persons or organisation in matters related to a proceeding.
- Assisting with negotiations related to native title.¹⁵

The Tribunal is not a court and does not decide whether or not native title exists.

Native Title Representative Bodies and Service Providers are independent agencies funded by the Commonwealth government to provide legal and other support to native title claimants. In NSW the Native Title Service Provider is **NTSCORP**.

The Commonwealth Government may become a party in claims which cover an area of land or waters held by the Commonwealth.

The NSW Government, as the manager of Crown land in NSW, is always a respondent party to native title determination applications in NSW.

Other stakeholders who may become parties to claims and ILUAs include Local Councils, mining companies, and farmers.

How does it work?

Aboriginal and Torres Strait Islander people can apply to have their native title rights recognised under the *Native Title Act 1993* by filing an application for a determination of native title (**a claimant application**) in the Federal Court.

As indicated above, the NTA prescribes the processes by which native title claims may be made, negotiated and resolved through agreement or court determination. With the number of possible outcomes and the numbers of claimants and parties often involved, in practice these processes tend to be complex and take time.

A native title claim is made on behalf of a native title claim group. The claim group is the group of Aboriginal people that claims to hold rights and interests in land and waters in accordance with traditional laws and customs. Nominated representatives, known as **Applicants**, are authorised by the claim group to make the application.

If the Federal Court decides that native title does exist the determination will set out:

- who the people who hold the common or group rights comprising the native title are;
- the nature and extent of the native title rights and interests in relation to the area;
- the nature and extent of any other interests in relation to the area;
- the relationship between the rights and interests of the native title holders and other interest holders; and
- whether the native title rights and interests allow the native title holders to possess, occupy, use and enjoy the land or waters to the exclusion of all others.



Figure 4 – Key stages in the native title determination process

Note: The above figure does not deal with the ILUA or Future Acts processes.

The Federal Court can make a determination of native title when:

- an agreement reached through **mediation** is referred to the Federal Court – known as a **consent determination**; or
- parties are unable to reach agreement and the Federal Court hears the evidence and determines if native title exists – known as a **litigated determination**.

As indicated above, other types of agreements such as ILUAs may be negotiated as part of or separate to a native title determination.

IS THERE A NOTIFICATION PROCESS WHEN A NATIVE TITLE CLAIM IS LODGED?

Under section 66(3) of the NTA, the Native Title Registrar must give notice to a number of different persons or bodies when a native title application has been filed. This includes Aboriginal or Torres Strait Islander bodies for the area and any person who holds a proprietary interest in the area, among others.

In NSW the National Native Title Tribunal gives notice to LALCs of native title determination applications that are filed within their boundary area.

The Registrar of the National Native Title Tribunal also advises the public by placing a notice in the Koori Mail and a relevant regional newspaper.

The National Native Title Tribunal can provide information about the notification process and becoming a party (contact details below). The National Native Title Tribunal website contains current information about native title claims on the 'Assistance' pages at:

www.nntt.gov.au/assistance/Geospatial/Pages/Maps.aspx

and 'Search' pages at: www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Native-Title-Claims.aspx



Registration of native title claims and the registration test

As outlined above, the native title claim process commences with an application made to the Federal Court to have a claim determined. Claimant applications are forwarded to the Native Title Registrar at the Native Title Tribunal who assesses them against a number of conditions found in the *Native Title Act 1993*. All new claimant applications, and some registered claims that have been amended, are subjected to the registration test, and only those claims that satisfy all of the conditions of the test will be placed on the Register of Native Title Claims.

The registration test's conditions ensure amongst other things that native title claims sufficiently identify the following:

- **Who** the claimants are,
- **What** the rights and interests being claimed are,
- **Where** the area of land subject to the claim is,
- That there is a factual basis for the rights and interests claimed, including that there has been a **continued association** with the area claim.¹⁶

Evidence is needed to satisfy the registration test, usually in the form of sworn statements made directly by claimants, or in reports made by historians and anthropologists.

If all of the conditions of the test are met, the claim must be *registered*.

Claimants with registered claims gain certain **procedural rights**, including the right to oppose non-claimant applications and the right to negotiate about some proposed developments that may have an effect on their claimed native title, such as mining projects – known as future acts. The right to negotiate does not empower claimants to block proposed developments, but does give claimants a say in how developments may proceed.

Unregistered claims may proceed through the native title process to determinations of native title, however unregistered claims may be vulnerable to applications for strike out by other parties to the application, or to dismissal by the court. It is open to a claim group, with the leave of the court, to amend their application to seek to meet the conditions of the registration test. If an application is dismissed without a determination being made, it is open to a claim group to file a new application.¹⁷



5. HOW DO THE TWO SYSTEMS INTERACT?

Land rights and native title are very different systems and each can be beneficial for Aboriginal Peoples. Native title claims can deliver rights and interests in land that may not be claimable under land rights. However, the rights in land delivered by land rights, generally being full ownership or freehold title, are significant rights that may not always be delivered under native title.

While both systems may provide benefits to Aboriginal people their interaction can be points of disagreement.

With cooperation, LALCs and native title claim groups and holders can work together to make the most of the two systems.

Can native title exist on land rights land?

Whether or not native title exists over land held by Aboriginal Land Councils will depend on a number of factors including how the LALC came to own the land (as a result of a successful land claim or by some other means), whether native title had previously been extinguished and, if the land is held by the LALC as the result of a successful land claim, the date upon which the land claim was lodged.

Further, in land where native title has previously been extinguished, the Federal Court can disregard the previous extinguishment in some cases. However, the native title that is recognised in these cases will not restrict the LALCs from dealing with their land.

Land claims lodged after 28 November 1994

Following the commencement of the NTA in 1993, the ALRA was amended on 28 November 1994 to take into account the new Commonwealth native title regime. As a result of these amendments, the ALRA now provides that, if the land was granted as a result of a land claim made **after** 28 November 1994, the land is subject to any native title rights and interests existing in relation to the lands granted immediately before the transfer (sections 36(9) and 36(9A), ALRA).

Native title continues to exist on this land unless there was an 'act' that extinguished native title before the land was granted under the ALRA.

This means that, should a native title claim group obtain a native title determination over an area of land held by an Aboriginal Land Council, the members of that group could be recognised by the Federal Court to hold rights and interests in the LALC's land. The rights and interests will vary with each determination but may include the right to access land and to hunt or fish on land. The Aboriginal Land Council would not be able to deal with the land or affect native title in any way without the agreement of the native title holders.

To determine if an Aboriginal Land Council's land may be subject to native title, a title search can be undertaken or the Certificate of Title for the land can be checked. If the title includes a notification that refers to section 42 (or its precursor section 40AA) of the ALRA, then the land may be subject to native title. However, further research may be necessary to determine if native title had been extinguished before the freehold grant. Aboriginal Land Councils can contact the NSWALC Land Rights Unit for further information.

Extinguishment of native title may be disregarded - section 47A of the NTA

For land that is owned by a LALC where native title has been extinguished, section 47A of the NTA enables the Federal Court to disregard previous extinguishment when making a determination¹⁸. Section 47A applies in circumstances where land is granted under legislation that makes provision for the grant to or for the benefit of Aboriginal peoples, or where the land is held expressly for the benefit of Aboriginal peoples, and members of the native title claim group occupy the area. This could include land granted to Aboriginal Land Councils under the ALRA. Occupation in the context of section 47A may not necessarily require people to live on the land. The land might be 'occupied' even if people are only occasionally visiting the land.¹⁹ Whether an area is 'occupied' will depend on the context of each individual claim.²⁰

Should section 47A of the NTA apply to the land, any extinguishment of native title caused by the grant of the land to the LALC or any prior act will be disregarded.²¹ However, the native title rights and interests recognised through the operation of section 47A will be subject to the non-extinguishment principle²² which means that the rights and interests have no effect in relation to the freehold interest granted to the Land Council under the ALRA.²³ This means that Land Councils are not restricted in dealing with any land they hold that has native title recognised through the operation of section 47A.

Can a native title claim be filed over land owned by an Aboriginal Land Council?

Generally a native title claim cannot be filed over freehold land, which is the title that Land Councils generally hold. However, a native title claim can be filed over land owned by an Aboriginal Land Council through the operation of section 47A of the NTA. This will depend on how the land came to be owned by the Aboriginal Land Council.

Can a native title claim be filed over land that has an existing undetermined Aboriginal land claim?

A native title claim may be filed over land that has an existing undetermined Aboriginal land claim. If a native title claim is filed over land that has an existing undetermined Aboriginal land claim, the land claim is to be determined as per the conditions on the land at the date the land claim was lodged.

This means where a native title application is filed **after** the Aboriginal Land Claim, this should not influence the Minister's decision on the Aboriginal Land Claim.

Can an Aboriginal land claim be granted over land covered by a native title claim?

No, an Aboriginal land claim lodged over land that is the subject of a registered native title claim or determination must be refused by the Crown Lands Minister. However, it is important to be aware that many native title claims are made over very large areas of land, but exclude specific parcels within that area from the claim depending on the tenure history of that land. Accordingly, there may be areas within the boundary of the native title claim that are able to be claimed under the ALRA.



How does native title affect land dealings on LALC land?

There are restrictions on an Aboriginal Land Council dealing with land that is subject to native title.²⁴ Section 42 of the ALRA provides, with certain limited exceptions, that an Aboriginal Land Council must not deal with such lands *'unless the land is subject to an approved determination of native title (within the meaning of the Commonwealth Native Title Act).'*

This means that, if an Aboriginal Land Council wants to deal with land where native title has not been extinguished and where there has been no determination of native title, the Aboriginal Land Council will either need to wait until a native title claim group makes an application that is determined, or make a **non-claimant application** (see below).

For land that is granted to a LALC not subject to native title – for example land that was granted as a result of a claim made before 28 November 1994 or which the LALC purchased – the Aboriginal Land Council will be able to deal with the land without requiring a Federal Court determination.

What is a non-claimant application?

A non-claimant application is an application for a determination of native title made to the Federal Court by a person who has a non-native title interest in relation to the area and who is asking the Court to make a determination that native title does **not** exist (a finding that there are no native title rights and interests in the area covered by the non-claimant application).

Persons and corporations can file non-claimant applications if they hold a non-native title interest in relation to the whole of the area. This may include an Aboriginal Land Council with an Aboriginal freehold title to the land or an individual holding a lease or licence or some other interest issued by the State government. Applications can also be made by a Commonwealth or State Minister, a statutory authority, or another government body.

In NSW, non-claimant applications are often used by State or local governments, or persons with an interest in an area (such as a licence), to validly deal in land that may be subject to native title. One of the avenues available under the Future Acts process is to proceed with a future act following a non-claimant application where no native title claim has been made in response within the notification period. Non-claimant applicants are seeking the protection of the NTA at section 24FA to ensure that the act they intend to undertake (the granting of a lease, the building of infrastructure etc) is valid in accordance with the NTA.²⁵

People considering making a non-claimant application should first establish whether native title may have been extinguished over the relevant area, in which case there may be no need to make a non-claimant application.

Under the *Aboriginal Land Rights Act* in NSW, there are certain circumstances in which Aboriginal Land Councils are also required to lodge non-claimant applications. Aboriginal Land Councils must obtain a judgement from the Federal Court that native title does not exist in land they own in Aboriginal freehold before they can sell, lease or agree to an easement over that land. This generally applies to freehold land granted to an Aboriginal Land Council on and after **28 November 1994**.

NSW Aboriginal Land Councils are not seeking a section 24FA protection, but are simply complying with a requirement under NSW legislation.

Non-claimant applications need to be filed with the Federal Court and have an associated application fee. The relevant form to lodge a non-claimant application (known as Form 2)²⁶ can be obtained from the Federal Court. LALCs seeking further information about filing a non-claimant application should contact the NSWALC Legal Services Unit.

Can Aboriginal Land Councils have a say over proposed developments in areas where native title has been claimed?

Aboriginal Land Councils can **have a say** in proposed projects or activities over areas where there are native title claims. Where activities propose to damage or destroy Aboriginal culture and heritage, Aboriginal Land Councils generally must be notified, unless native title has specifically been determined to exist over that area.²⁷

In summary, a native title determination may affect freehold land owned by Aboriginal land councils in the following ways:

- 1. Freehold is subject to native title** – LALC cannot deal with freehold land without compliance with the *Native Title Act*.
- 2. Freehold with native title recognised by operation of section 47A of the NTA** – LALC can deal with freehold.
- 3. Freehold without any native title** – LALC can deal with freehold.

It is important to note that LALCs cannot lose their freehold land if there is a native title determination, however a determination that native title exists over LALC owned land may change what LALCs can do with their freehold.



6. BECOMING A PARTY TO A NATIVE TITLE CLAIM

Persons or organisations who hold a valid interest can apply to become a party to native title claims

Any person or body who holds an interest in relation to land or waters covered by a native title application can apply to the Federal Court to become a party to a native title claim. Becoming a party means being part of the proceedings in the Federal Court. Parties will often have legal representation. Parties may be directed by the court to be involved in mediation or case management meetings to endeavour to resolve the claim by agreement. If agreement cannot be reached the matter may proceed to trial.

People or organisations with property or other interests in a claim area may become a respondent party to a native title claim to ensure that their interests are properly dealt with in the native title determination. A LALC may consider becoming a party to a native title claim where a native title claim is filed over land that the LALC holds, or is subject to an Aboriginal land claim.

Becoming a party does not necessarily mean that the person or organisation challenges that the native title claim group are the right people to be determined to hold native title in an area. Many respondent parties do not take a position on this issue and their involvement is limited to any issues affecting their property or other interests.

More information and forms are available on the Federal Court of Australia website:
www.fedcourt.gov.au/litigants/native/litigants_nt_formsandguides.html

Process to become a party to a native title claim

If a person/organisation wishes to become involved within the 3 month notification period a '*Notice of Intention to become a party to an application*' (Federal Court Form 5)²⁸ will need to be completed outlining the basis on which the person/organisation wants to become a party and describing the nature of their interests. The Federal Court asks that people/organisations who want to become a party provide documentary evidence of the type of interests they hold and its location in the native title claim area. The form needs to be returned it to the District Registrar of the Federal Court.



To become a party to a native title claim without paying any fee persons/organisations need to apply to the Federal Court within the **three month notification period**.

If a person/organisation wants to become a party to a native title determination application outside the three month notification period it will need to apply to the Federal Court. In addition to having an interest in the native title claim area, the person/organisation will need to satisfy the court that it is in the interests of justice that it be joined as a respondent party. Filing and other court fees may be payable where an application to become a party is made outside the notification period. LALCs considering making such an application should contact NSWALC.

Considerations for LALCs when notified of a native title claim

There are a number of issues LALCs may wish to consider when advised of a native title application:

1. **Check the area of the native title claim** and find out whether any land owned or under claim by LALCs falls within the area under claim. The Legal Services Unit (LSU) and Land Rights Unit (LRU) of NSWALC can assist with this.
2. **Decision whether to apply to be a party:** If the LALC does have land owned or claimed in the native title area, it will have to decide whether it wishes to become a party to the native title claim. The LALC will also have to consider how that decision should be made.
3. If a LALC wishes to apply to become a party to the native title claim the LALC should **respond to the Federal Court** within the notification period to avoid filing fees.

Should a LALC be joined as a party to the native title claim, it will need legal representation in the Federal Court proceedings. While NSWALC is not in a position to provide legal advice to LALCs, it can assist the LALCs with engaging legal representation and seeking financial assistance from the Commonwealth Government.



7. FURTHER INFORMATION AND ASSISTANCE

It is important that further advice or assistance is sought where there are concerns or questions about land rights or native title matters. Depending on the matter, this may be in the form of specialist independent financial, legal, or property advice.

It is recommended that LALCs contact NSWALC in the first instance who can provide initial advice and assistance.

The National Native Title Tribunal (**NNTT**) may also be able to assist on a range of matters including:

- Information about a native title claim and which areas it covers, including geo-spatial assistance to help understand which parcels are included,
- Information about non-claimant applications and the process,
- Information about past decisions,
- Assist people, at any stage of the native title proceeding, in matters relating to the proceeding, and
- Assist parties to an ILUA prepare the application and accompanying material.

When considering engaging consultants or advisors it is important to know what to expect, how fees are charged and what to do should something go wrong. It is also important to ask what experience the person or firm has in land rights and native title as these are very specific areas of the law.

How do LALCs find out if a native title application has been lodged in their boundaries?

Contact the National Native Title Tribunal or NTSCORP (details below).

As there may be many native title cases underway the Federal Court also maintains a public list of 'Priority cases' which is available at:

www.fedcourt.gov.au/litigants/native/litigants_nt_cases_current.html.

How can Aboriginal Land Councils find out if land they own is subject to native title rights and interests?

A 'Title Search' can be undertaken to find out whether a parcel of land may be subject to native title rights and interests.

Title searches can be performed online on the NSW Land and Property Information (LPI) website at a cost of \$12.40 (including GST): www.lpi.nsw.gov.au/land_titles/online_products.

LPI can also be contacted by phone on 1300 052 637.

The NSWALC Land Rights Unit may be able to provide assistance.

8. CONTACT INFORMATION

LAND RIGHTS

NSWALC

Phone: 02 9689 4444

Legal Services Unit, Land Rights Unit or Policy and Research Unit

Website: www.alc.org.au

NSWALC has developed a series of Land Claims Fact Sheets and resources available on the NSWALC website.

Registrar of the ALRA

Phone: 02 9562 6327

Email: adminofficer@oralra.nsw.gov.au

Website: www.oralra.nsw.gov.au

The Registrar has developed a number of guides and resources available on the Registrar's website.

LALCs

Website: www.alc.org.au/land-councils/overview.aspx

Visit the 'Land Councils' page of the NSWALC website to find out about Local Aboriginal Land Councils.

NATIVE TITLE

Federal Court of Australia

Phone: 02 9230 8567

Website:

www.fedcourt.gov.au/law-and-practice/areas-of-law/native-title

For Fact Sheets, forms & case updates.

National Native Title Tribunal

Telephone: (02) 9227 4000

Freecall: 1800 640 501

Email: nswenquiries@nntt.gov.au

Website: www.nntt.gov.au

The NNTT website contains a range of Fact Sheets, booklets, maps and other useful information about native title.

NTSCORP Limited

Phone: 02 9310 3188

Freecall: 1800 111 844

Email: ntscorp@ntscorp.com.au

Website: www.ntscorp.com.au

The native title service provider for NSW and the ACT. NTSCORP has produced a range of Fact Sheets on native title available on their website, in addition to providing information about genealogy.

9. GLOSSARY

Aboriginal Owners (ALRA) – Under the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, the Registrar of the ALRA must keep and maintain a ‘Register of Aboriginal Owners’: a register of Aboriginal people who have a cultural association with an area of land in New South Wales. The relevant part of the ALRA are sections 170 – 175. An entry in the Register records the name of the Aboriginal person, the location of the land, and the nature of the cultural association. A person’s name can only be entered on the Register of Aboriginal Owners if the person: is directly descended from the original Aboriginal inhabitants of the cultural area in which the land is situated; has a cultural association with the land that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants; and has given consent to have their name added to the Register.

Claimable Crown Lands (ALRA) – Lands vested in Her Majesty that are: able to be lawfully sold or leased, not lawfully used or occupied, not needed or likely to be needed as residential lands or for an essential public purpose, not the subject of an application for a determination of native title, and are not the subject of an approved determination of native title (section 36(1) *Aboriginal Land Rights Act 1983 (NSW)*).

Coexistence – the existence and exercise of native title rights alongside the rights of others over the same area of land or waters. For example, native title rights to go onto land to hold ceremonies may ‘coexist’ with the rights of a leaseholder to graze cattle. Coexistence is about sharing the land and waters in a way that recognises everyone’s rights and interests in the area.

Consent Determination (NTA) – In relation to native title, is a determination of native title by the Federal Court made following agreement after mediation between the parties to the native title proceedings as to whether native title exists in relation to an area of land and waters.

Determination of Native Title (NTA) – A decision made by an Australian court or other recognised body as to whether or not native title exists in relation to an area of land or waters. If native title is determined to exist the determination will include, amongst other things, a decision about who the native title rights holders are, what native title rights and interests exist in relation to the land and waters, and whether any other interests exist in the area (section 225 *Native Title Act 1993 (Cth)*).

Extinguish (NTA) – this term is used when Australian law does not recognise native title because of things that governments did, or allowed others to do in the past, have made recognition legally impossible. Generally once native title is extinguished they cannot be recognised again under Australian law. However, in certain circumstances, the NTA allows the courts to ignore the effect of extinguishment, which includes on land held for the benefit of Aboriginal people or Torres Strait Islander peoples (s237A *Native Title Act 1993 (Cth)*).

Federal Court – means the Federal Court of Australia (s253 *Native Title Act 1993 (Cth)*). Under the *Native Title Act 1993 (Cth)*, the Federal Court is able to make determinations of native title and compensation, refer native title and compensation applications to mediation, and make orders to give effect to terms of agreements reached by parties to proceedings, including terms that involve matters other than native title.



Freehold – Freehold title is equivalent to full ownership of the land, giving the owner the exclusive right to the land. The valid grant of a parcel of freehold is known as a ‘previous exclusive possession act’ under the *Native Title Act 1993* (Cth) that will have extinguished native title, and must generally be excluded from Native Title claims.²⁹

Future act (NTA) – a proposed activity on land/waters that may affect native title.

Indigenous Land Use Agreement (ILUA) – An ILUA is a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners or governments).

Litigated Determination (NTA) – In relation to native title, is a determination of native title made following a trial process.

Mediation (NTA) – the process of bringing together the people with an interest in an area covered by a native title application in order to reach an agreement. Mediation may be facilitated by the National Native Title Tribunal or the Federal Court.

Native Title (NTA) – or *native title rights and interests* means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where the rights and interests are possessed under the traditional laws and customs observed by the Aboriginal peoples or Torres Strait Islanders, and the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and the rights and interests are recognised by the common law of Australia (s. 223(1) *Native Title Act 1993* (Cth)).

Native Title Claim Group (NTA) – In relation to a native title claim, means the persons who, according to their traditional laws and customs, hold the rights and interests comprising the particular native title claimed (s61 and s253 *Native Title Act 1993* (Cth)).

Native Title Holder (NTA) – the person or persons who hold native title in relation to land or waters, or, where a prescribed body corporate has been nominated to be trustee of the native title and is registered on the National Native Title Register as holding the native title rights and interests on trust, the prescribed body corporate (s224(a) and (b) *Native Title Act 1993* (Cth)).

Non-claimant application (NTA) – an application made by a person who does not claim to have native title but who seeks a determination that native title does not exist (s253 *Native Title Act 1993* (Cth)).

Prescribed Body Corporate (NTA) – The legal body nominated by the people who will be recognised as the native title holders in a Determination of Native Title to either hold the native title in trust, or to act as the native title holders’ agent or representative in performing various functions under the *Native Title Act 1993* (Cth) (ss 56, 57, and 58 *Native Title Act 1993* (Cth)).



Register of ILUAs (NTA) –the register established and maintained under Part 8A of the *Native Title Act 1993* (Cth)), and includes information in relation to all ILUAs registered under the Act. To find out if an ILUA exists in an area of land or water contact the NNTT: www.nntt.gov.au.

Register of Native Title claims (RNTC) (NTA) – the Register of Native Title Claims established and kept by the Native Title Registrar, and that contains information about native title applications.

Registration Test – a set of conditions under the NTA that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with other certain rights, while their application is underway.

Registered Native Title Claimant – In relation to land or waters, means a person or persons whose name or names appear in an entry on the Register of Native Title Claims as the applicant in relation to a claim to hold native title in relation to land or waters (s253 *Native Title Act 1993* (Cth)).

Registrar (Land Rights) – For the purposes of the *Aboriginal Land Rights Act 1983* (NSW) the Registrar of the ALRA has various functions under section 165 of the *Aboriginal Land Rights Act 1983* (NSW), including registering and maintaining the register of Aboriginal Land claims, maintaining the Register of Aboriginal Owners mediating, conciliating, or arbitrating disputes, investigating complaints, and providing information to the Minister.

Registrar (Native Title) – The Native Title Registrar is appointed under the *Native Title Act 1993* (Cth) and has various powers in relation to ILUAs and future act negotiations (Part 2), native title determination applications (Part 3), and the Register of Native Title Claims, the National Native Title Register, and the Register of ILUAs (Parts 7, 8 and 8A *Native Title Act 1993* (Cth)).

Section 31 Deed – means the legal document containing the agreement of the parties under the right to negotiate provisions of section 31 of the *Native Title Act 1993* (Cth) in relation to the doing of particular Future Acts. The agreement is often known as a ‘section 31 agreement’.³⁰

The National Native Title Tribunal has developed a more comprehensive Glossary of key terms related to native title, available at: www.nntt.gov.au/Pages/Glossary.aspx .



APPENDIX I – NSWALC GUIDING PRINCIPLES ON NATIVE TITLE

NSWALC has adopted the following Guiding Principles to guide its approach to native title matters.

1. NSWALC recognises that native title and land rights are both important systems that provide positive rights for, and advance the interests of, Aboriginal peoples.
2. NSWALC seeks to demonstrate leadership by being proactive in its approach to dealing with the interaction of land rights and native title in NSW.
3. NSWALC seeks to work respectfully, constructively and collaboratively with all native title claimants, native title holders and NTSCORP and others to deliver the best of both systems to Aboriginal peoples, and to negotiate agreed positions wherever possible.
4. NSWALC recognises that Local Aboriginal Land Councils (LALCs) are autonomous bodies corporate that exist for the benefit of all Aboriginal people in their area and their members, and that LALCs must make decisions about their land and resources in accordance with the interests of their members.
5. NSWALC seeks to promote community cohesion, equitable outcomes, and to minimise conflict wherever possible.
6. Recognising and respecting that Aboriginal Land Councils are land owners with property interests, NSWALC seeks to provide information and assistance to LALCs about native title claims in their boundary area in order to ensure that each LALC can make informed decisions about how the LALC engages with native title.



ENDNOTES

- ¹ The Aboriginal Land Rights Act 1983 (NSW) can be accessed on the NSW Legislation website at: www.legislation.nsw.gov.au under 'Browse' then 'A'.
- ² NSWALC publications such as *Our Sites Our Rights* (2010) provide an overview of the history of Aboriginal peoples struggle to achieve land rights.
- ³ The NSWALC website provides a detailed history of the land rights movement in NSW: www.alc.org.au/about-nswalc/our-history.aspx.
- ⁴ Section 36 of the Aboriginal Land Rights Act outlines the criteria for claimable Crown land.
- ⁵ Part 4A of the National Parks and Wildlife Act sets out provisions relating to joint management.
- ⁶ Sections 170-175 of the Aboriginal Land Rights Act sets out provisions relating to Aboriginal Owners.
- ⁷ National Parks and Wildlife Act 1974 (NSW), Part 6, and National Parks and Wildlife Regulation 2009, Part 8A.
- ⁸ ALRA, ss 170-175.
- ⁹ Please visit the Office of the Registrar of the Aboriginal Land Rights Act for more information about Aboriginal Owners and Joint Management of National Parks: www.oralra.nsw.gov.au/registerjmntp.html
- ¹⁰ See sections 47, 47A and 48 of the Native Title Act (Cth).
- ¹¹ National Native Title Tribunal, Accessed: www.nntt.gov.au/Indigenous-Land-Use-Agreements/Pages/why_iluas.aspx. Date: 9 May 2014.
- ¹² More information about ILUAs is available on the NNTT website at: www.nntt.gov.au/ILUAs/Pages/default.aspx
- ¹³ Native Title Act (Cth), Section 224.
- ¹⁴ More information about the role of the Federal Court can be accessed on their website at: www.fedcourt.gov.au/litigants/native/litigants_nt_what.html
- ¹⁵ National Native Title Tribunal, Available: www.nntt.gov.au Accessed 12 May 2014.
- ¹⁶ Native Title Act (Cth), Section 190B.
- ¹⁷ More information about the Registration test is available on the NNTT website at: www.nntt.gov.au/nativetitleclaims/Pages/Registration-Testing.aspx
- ¹⁸ Native Title Act 1993 (Cth), Section 47A
- ¹⁹ *Moses v Western Australia and Others* (2007) 241 ALR 268 at 315-318
- ²⁰ *Moses v Western Australia and Others* (2007) 241 ALR 268 at [210]
- ²¹ Native Title Act 1993 (Cth), Section 47A(2)
- ²² Native Title Act 1993 (Cth), Section 47A(3)
- ²³ Section 238 NTSA
- ²⁴ Section 42, ALRA
- ²⁵ For more information about non-claimant applications, see the National Native Title Tribunal Fact Sheet at: www.nntt.gov.au/nativetitleclaims/Pages/default.aspx
- ²⁶ Further details and copies of Federal Court forms can be found on the Federal Court website at: www.fedcourt.gov.au/forms-and-fees/forms/native-title-regulations
- ²⁷ National Parks and Wildlife Regulation 2009, Clause 80C
- ²⁸ Federal Court Form 5 is available to download from the Federal Court website at: www.fedcourt.gov.au/fff/fff_NTregulations_5.html
- ²⁹ www.nntt.gov.au/nativetitleclaims/Pages/Native-title-claims-and-freehold-land.aspx
- ³⁰ www.atns.net.au/subcategory.asp?subcategoryid=120







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