

The native title termination clauses and your licence

Native title is the legal recognition of the rights and interests that Aboriginal people have in land and waters. The native title rights that have been most often recognised in New South Wales (NSW) are ‘non-exclusive’, which means the rights of native title holders must co-exist with the existing rights of the community and NSW Government.

A native title determination is a decision by the Federal Court of Australia, made in accordance with the Commonwealth *Native Title Act 1993*, that native title does or does not exist in a particular area of land or waters.

The NSW Department of Industry—Crown Lands (the Department) has undertaken a review of some licences that contain certain clauses relating to native title (see table 1 below listing different native title termination clauses or subclauses).

The Department is removing these clauses or subclauses to ensure that all licences issued by the Department are able to remain in place if there is any future native title determination of non-exclusive native title rights in the area covered by the licence.

If your licence contains one of these clauses or subclauses, and you received a letter regarding notice of a direction made under section 140 of the *Crown Lands Act 1989*, then these clauses or subclauses have been removed from your licence.

Updated versions of licences are not being posted to licence holders, instead, a record has been placed both on your file and on the Crown land database noting this change.

You do not need to do anything as your licence continues to remain in place.

Changes to licences that contain certain clauses

- If your licence contains one of the clauses listed in Table 1, then it has been removed.
- If your licence contains more than one clause listed in Table 1, then all those native title termination clauses have been removed.
- It is possible that your licence may not contain any of the clauses listed in Table 1. If this is the case, then there is no change to your licence.

Table 1 Clause to be removed if it is contained in your licence

Clauses to be removed
<p>Licence granted subject to Native Title</p> <p>(a) You are granted this Licence pursuant to sub-division “L” of the Native Title Act 1993 and the non-extinguishment principle applies.</p> <p>(b) Notwithstanding any other provision of this Licence, this Licence shall/may terminate in the event that an approved determination is made under any statute relating to Native Title that Native Title exists in the land, waters or part thereof.</p> <p>(c) Except as may be expressly provided for in this Licence You acknowledge and agree that You will not be entitled to any compensation costs or damages in respect of the termination of this Licence by operation of this clause.</p>

Clauses to be removed

Termination of licence on determination of Native Title

- (a) Notwithstanding any other provision of this Licence this Licence shall/may terminate in the event that an approved determination is made under any statute relating to native title that native title exists in the land or part thereof.
- (b) Except as may be expressly provided for in this Licence the Holder acknowledges and agrees that the Holder will not be entitled to any compensation costs or damages in respect of the termination of this Licence by operation of this clause.

Licence granted subject to Native Title – *only subclause (d) to be removed*

- (a) In this clause “waters”, “Native Title rights and interests” and “approved determination of Native Title” have the same meaning as those terms have in the Native Title Act 1993 (Cth).
- (b) This Licence is subject to any Native Title rights and interests existing in relation to that part of the Premises that consist of waters.
- (c) You must not interfere with the exercise or enjoyment of any Native Title rights and interests in respect of the waters within the Premises by any person entitled to enjoy such rights and interests.
- (d) Despite any other provision of this licence, and as required by the Native Title Act 1993 (Cth) the Minister shall/may terminate this Licence by Notice to You in the event that a court makes a determination that Native Title rights and interests exist in relation to the land or waters within the Premises.*

Licence subject to Native Title – *only subclause (d) to be removed*

- (a) In this clause the word "waters" and the expressions "native title rights and interests" and "approved determination of native title" have the same meaning as in the Commonwealth Native Title Act 1993.
- (b) This Licence is granted subject to any native title rights and interests existing in relation to that part of the premises that consist of waters.
- (c) The Holder expressly agrees not to interfere with the exercise or enjoyment of any native title rights and interests in respect of the waters within the premises by any person entitled to exercise or enjoy such rights and interests.
- (d) Notwithstanding any other provision of this Licence the Minister by notice in writing may terminate this Licence in the event that any approved determination of native title is made that native title rights and interests exist in relation to the land or waters within the premises.*
- (e) Except as may be expressly provided for in this Licence the Holder acknowledges and agrees that the Holder will not be entitled to any compensation costs or damages in respect of the termination of this Licence under this clause or the loss or benefit of any improvement authorised to be constructed by this Licence.

Any other clause or condition that operates to terminate any of the Licences on the making of an approved determination of Native Title affecting the land subject to any relevant Licence.

More information

T: 1300 886 235 (choose option 3, then option 2)

E: enquiries@crowmland.nsw.gov.au

W: www.crowmland.nsw.gov.au