

Native title implications on Crown land

Native title is the legal recognition of the traditional and enduring communal, group or individual rights and interests held by Aboriginal people in land and water.

This fact sheet explains how native title affects people who have an interest, such as a lease, over Crown land.

What is native title

Native title exists where Aboriginal people have continued to maintain their connection to land and waters in accordance with traditional laws and customs that predate European settlement.

The *Commonwealth Native Title Act 1993* sets out how native title rights are to be recognised and protected. Crown Lands must comply with this legislation.

How will I be affected by a native title claim?

Native title rights and interests may have implications for both Aboriginal communities and the broader community. The NSW Government is committed to reaching outcomes that benefit all parties involved.

For Crown Lands, the lodgement of a native title application does **not** affect:

- the ability of current tenure holders to continue to exercise their rights under a valid lease or licence;

- the ability to renew or re-grant existing interests (lease or licence) on the same terms in many cases, as long as the State follows the procedural rights that must be afforded to the native title applicants under the *Native Title Act 1993*; or
- the continued operation of Crown reserves for their declared purpose.

After a claim is lodged, but before it has been determined, many new activities can still proceed within the claim area. This is subject to the relevant entity (such as a government agency) notifying and meeting other procedural rights owed to the claimants. These may include opportunities to comment on the proposed activity, a right to be consulted, or, in limited circumstances, a right to negotiate.

In some cases, the native title claim means new leases or other interests cannot be granted.

This may arise for several reasons:

- previous tenures do not meet the renewal requirements of the *Native Title Act 1993*
- the land was reserved after 1996
- the proposed interest is inconsistent with the declared purpose of the reserve
- the proposed interest would have a greater impact on native title than activities permitted under the reserve purpose

In such circumstances either:

- **An Indigenous Land Use Agreement (or ILUA)** will need to be negotiated with the native title claimants and registered. ILUAs are voluntary, legally binding agreements between native title parties and other stakeholders, such as government agencies or other interest holders about the use and management of land or waters. For other interest holders (i.e. a lessee or licensee, an ILUA provides legal certainty by securing the consent of native title holders to the proposed tenure or activity, ensuring that the tenure can be granted and exercised lawfully under the *Native Title Act 1993*.
- **A non-claimant application** may need to be lodged with the Federal Court of Australia to seek what is known as “section 24FA protection” to allow for a specified future act, such as the grant of a lease, to be done

What is the process to consider a native title claim?

After a native title claim is made, 3 key issues need to be considered by government:

- Is there sufficient evidence that the native title claimants hold native title in the claim area?
- What land and waters do the native title rights apply to?
- What are the native title rights in this area?

These are considered in accordance with the government's obligations under the *Native Title Act 1993*. If, after a careful review of evidence supplied by the native title claimants, the NSW Government is satisfied that native title exists, negotiations will commence with the claimants to agree of the terms of a consent determination. This is a Federal Court order that sets out where native title applies and the native title rights and interests which will be recognised.

During these negotiations, the NSW Government represents the interests of NSW generally. It does not directly represent individual parties that might be affected by a native title application.

To determine what land native title applies, the NSW Government reviews past tenures granted by the State to help decide whether native title has been wholly or partly extinguished. One factor considered is whether past uses were inconsistent with the declared purpose of a reserve.

The Federal Court determines where native title exists and where it has been extinguished.

How are native title claims resolved?

Claims may be resolved through:

- a contested hearing in the Federal Court, or
- a consent determination, where all parties reach agreement

The NSW Government aims to resolve claims by consent and is required to act in good faith in mediating any native title claims made. In some cases, where a native title group agrees, the NSW Government may seek to negotiate an ILUA - providing a framework of

validating future acts (e.g. grants of leases or licences), after the consent determination is made.

Each determination is different and reflects the rights and interests recognised. Native title may include rights to access and use land for a variety of purposes, including the right to hunt, fish, gather, camp, undertake ceremonies, protect cultural heritage, undertake cultural activities and use certain natural resources.

What are my options if I think I might be affected by a native title application?

If you think your interests are affected, you may wish to contact Crown Lands or seek further information from the Crown Lands website or the National Native Title website (below).

More information

Crown Land website; Search | [Crown Lands \(nsw.gov.au\)](https://www.crownlands.nsw.gov.au)

The National Native Title Tribunal provides general information about native title and the native title process. Further information is available from <https://www.nntt.gov.au/> or by contacting the Tribunal on 1800 640 501.