



National
Native Title
Tribunal

About the National Native Title Tribunal's registers

National Native Title Tribunal registers and databases: who needs to use them?

The **Native Title Registrar** (the Registrar) maintains three **registers** of important information related to native title. The registers are held electronically in the principal registry of the **National Native Title Tribunal** (the NNTT) in Perth, Western Australia. Information from them can also be obtained from each of the state or territory registries. The registers are the:

- **Register of Native Title Claims** which contains information about native title claimant applications that have satisfied the conditions for registration (the registration test) set out in s. 190A of the *Native Title Act 1993* (Cwlth) (the Act)
- **National Native Title Register** which contains information about all approved determinations of native title in Australia
- **Register of Indigenous Land Use Agreements** which contains information about indigenous land use agreements (ILUAs) made between people who hold, or may hold, native title in the area and other people, organisations or governments.

The NNTT also maintains a **Schedule of Native Title Applications** which contains summaries of all native title applications filed in the Federal Court, regardless of whether they are registered on the Register of Native Title Claims or not.

In addition to the above registers and database, the NNTT maintains spatial datasets which represent the external boundaries of all active native title claimant applications, approved determinations, ILUAs and future act notices.

If you are involved in a **native title claimant application**, a **non-claimant application**, a **compensation application**, a **future act** application, or an **indigenous land use agreement**, the information contained in the registers, database and spatial datasets may be essential. This information is particularly important if you are making an ILUA, or are proposing to do certain 'future acts' over an area of land or waters that will affect native title (for example, the grant of mining, prospecting or exploration tenements), to establish who the native title parties are who must be involved in these processes.

Register of Native Title Claims

The Register of Native Title Claims contains information about native title claimant applications in Australia, including offshore areas, that have satisfied the conditions for registration set out in s. 190A of the Act or equivalent provisions applied by a recognised State or Territory body.

The information contained in the Register of Native Title Claims includes (but is not limited to):

- a description of the land and waters covered by the claim
- the rights and interests claimed that can be registered
- the names of the person or persons (known jointly as the applicant) authorised to make the application on behalf of the native title claim group
- contact details for the applicant.

All new claims, and most amended claims, must be tested for registration against the conditions for registration. This is called the registration test.

In some cases, the Register of Native Title Claims can be changed to reflect certain amendments to claims, without the registration test being applied. These include a change of representative body or address, a reduction of the area claimed and/or the removal of any of the native title rights and interests claimed. The Register of Native Title Claims can also be updated without the registration test being applied following an order by the Federal Court under section 87A, which deals with consent determinations over part of the area covered by the application.

The registration of a claim gives claimants procedural rights in relation to the doing of certain 'future acts' in the claim area. Future acts are proposed acts, relating to land or waters, such as the grant of mining, prospecting or exploration tenements, which will affect native title. Depending on the type of future act, procedural rights range from the right to be notified, to be consulted, to comment or to negotiate. Registered claimants also gain the right to oppose non-claimant applications and to be parties to certain types of indigenous land use agreements.

If the Registrar decides not to register a claim after applying the registration test, an applicant may apply for a **reconsideration** of the claim in their application by a member of the Tribunal, or they may seek review of the decision not to register their claim in the Federal Court. The applicant may also apply to the Federal Court for a review of the decision not to accept the claim for registration following reconsideration of the claim.

It can take some time for claimant applications to be finally resolved. People or governments who want to do things in areas where native title might exist need, among other things, to find out if there are any registered native title claimant applications in that area. The Register of Native Title Claims will tell them if there are.

Summaries of registration test and reconsideration decisions are posted on the Tribunal's website at www.nntt.gov.au. The reasons for these decisions are also made public once they have been edited to remove personal references or any matters of cultural or customary sensitivity.

National Native Title Register

The National Native Title Register contains information about all approved **determinations of native title** in Australia, including offshore areas. A determination states whether native title exists, or not, over the whole or part of the area covered by an application. The information contained on the National Native Title Register includes (but is not limited to):

- the date of the determination
- a description of the land or waters covered by the determination
- the names of those who hold the native title, if it is found to exist
- information about the native title rights and interests recognised.

A determination that native title does or does not exist may cover one or more native title applications, or part of an application or applications. When only part of an application is the subject to a determination, the remainder of the application may be dismissed, discontinued, withdrawn or it may remain active for determination at a later date.

If native title is determined to exist, the Act requires that a prescribed body corporate (PBC) is nominated. The National Native Title Register records the name and address of any PBC that has been determined and whether the PBC holds the native title rights and interests on trust or acts as agent for the common law native title holders.

A determination that native title exists is not finalised until a PBC has been determined for the area and is registered on the National Native Title Register. Sometimes that happens at the same time as the determination that native title exists. If that is the case, the determination is registered on the National Native Title Register and the relevant claimant application(s), or part of the application(s), are removed from the Register of Native Title Claims immediately. Once registered, a PBC is referred to as a registered native title body corporate.

If, there is a delay in the nomination of the PBC, the determination is registered on the National Native Title Register and the relevant claimant application(s), or part application(s), where native title has been determined to exist remain on the Register of Native Title Claims. Any areas where native title has been determined not to exist are removed from the Register of Native Title Claims immediately. The Register of Native Title Claims will also include a note indicating that areas where native title has been determined to exist will remain on the Register of Native Title Claims until one or more PBC have been determined for the area. Retaining an application, or part application, on the Register of Native Title Claims may give the native title holders access to certain procedural rights until a PBC is registered.

People and governments who want to do business in areas where native title might exist should check the National Native Title Register for any determinations of native title. Where a prescribed body corporate has been determined for the area, and registered, the National Native Title Register will provide the contact details. Where no prescribed body corporate has been determined the relevant contact details of the applicant will be available on the Register of Native Title Claims.

Register of Indigenous Land Use Agreements

An indigenous land use agreement is a type of contract between people who hold, or may hold, native title in an area and other interest holders. While registered, an ILUA binds *all* native title holders for the area to the terms of the agreement, whether or not they are signatories to it. The Register of Indigenous Land Use Agreements contains information about all registered ILUAs.

An ILUA is only registered if the Registrar:

- has checked that the agreement and the application comply with the requirements of the Act and the regulations
- has notified specified persons and, in certain cases, the public of the ILUA
- considers that the conditions for registration have been met.

The Registrar must also remove an ILUA from the Register in certain circumstances, for example, where the parties advise the Registrar in writing that they wish to terminate the agreement.

Parties may wish to keep the details of an ILUA confidential. The Act however, requires that the Register of Indigenous Land Use Agreements contains the following details:

- a description of the area covered by the agreement
- the name of each party to the agreement and the address at which they can be contacted
- the period during which the agreement will operate, if specified
- any statements regarding surrender of native title, the doing of future acts, contracting out of the right to negotiate, the validation of future acts already done or changing the effect of validation of an intermediate period act, if they are included in the agreement.

The Registrar may also enter any other details that are considered appropriate.

People wanting to make an ILUA should also check the Register of Native Title Claims, National Native Title Register and the Schedule of Native Title Applications to see if there are any people or organisations who must be parties to the type of ILUA they are considering. People should, however, be aware that the registers and databases may not contain records of all persons who may need to be parties to particular types of ILUAs. For example, some people may need to be involved who hold, or claim to hold native title, but have not filed a claimant application. Such people can only be identified by discussion and consultation on the ground (for example with the Aboriginal and Torres Strait Islander Representative Body for the area).

Schedule of Native Title Applications

The **Schedule of Native Title Applications** contains information held by the NNTT concerning all native title applications — claimant, non-claimant, compensation and applications for a revised determination of native title. This includes claimant applications that are not on the Register of Native Title Claims because they have:

- not yet been considered for registration
- been considered for registration but have not been accepted, or
- been amended, but the amended application has not yet been considered for registration.

The schedule does not include applications which have been filed in the Federal Court but not yet given to the Registrar.

When the Registrar is advised by the Federal Court of an amendment to an application the Schedule of Native Title Applications is amended accordingly. The Registrar must then consider whether, as a result of that amendment, the application needs to undergo the registration test again. In some cases the application will not have to — for example, where there is a change of representative body or address, a reduction of the area claimed and/or the removal of any of the native title rights and interests claimed.

It is important to compare any extract from the Register of Native Title Claims in relation to a particular application with the corresponding entry in the Schedule of Native Title Applications. This is because in some cases an amended application will need to have the registration test applied. This can take between two to six months. During that time the details on the Schedule of Native Title Applications and the Register of Native Title Claims will not be consistent.

If the amended application meets the conditions for registration, the Register of Native Title Claims will be updated. If the amended application does not meet the registration conditions, it will be removed from the Register of Native Title Claims but will remain on the Schedule of Native Title Applications.

The example below illustrates the potential for there to be differences between the entries on Register of Native Title Claims and the Schedule of Native Title Applications in relation to the same application:

The claim in a native title application satisfies the conditions of the registration test and is entered on the Register of Native Title Claims. The native title claimants then amend their application to change the area description. The amendments reduce the area covered by the application, so the Registrar simply amends the Schedule of Native Title Applications and the Register of Native Title Claims to reflect the reduced claim area. There will be no difference between the entry on the Register of Native Title Claims and the Schedule of Native Title Applications in relation to the application area.

If however, the claimants were to further amend their application to change the claim group description, the Schedule of Native Title Applications would be updated immediately but the Registrar would have to re-apply the registration test to the amended claim before the Register of Native Title Claims could be updated. Until this is done the claim group description will be reflected differently on the Register of Native Title Claims and the Schedule of Native Title Applications.

If the claim in the amended application meets the conditions for registration, the Register of Native Title Claims will be updated. If it does not it will be removed from the Register of Native Title Claims but will remain on the Schedule of Native Title Applications.

Spatial datasets

The NNTT holds geospatial data to support the registers but which do not technically form part of the statutory registers. These datasets are designed to help people to visualise native title determination applications, approved determinations and ILUAs and search on these matters.

This data relates to the *external boundaries* of:

- all active claimant applications, both registered and unregistered
- all active non-claimant applications
- all active compensation applications
- all approved determinations of native title, either that native title does or does not exist
- all registered ILUAs and ILUAs that are in the registration process.

Data is also held on all historical applications and agreements (for example, applications and agreements which have been dismissed, discontinued or withdrawn).

Inspecting the registers

The NNTT can assist anyone to identify native title applications, native title determinations and ILUAs that may cover a particular area. If you already know the name or file number of an application, a determination or an ILUA in relation to the area you are interested in, you can inspect the Registers of the NNTT. Inspecting the registers in person also allows you to look at any additional material such as maps that the NNTT may hold that would be too impractical to photocopy and send to you by mail.

Any person may inspect these registers at any time during normal business hours by visiting one of the Tribunal's offices in Brisbane, Cairns, Melbourne, Perth and Sydney. A self help service is also available using Native TitleVision – the Tribunal's web-based visualisation and enquiry system.

There are no charges for inspecting the registers. Photocopying fees may apply if you wish to take away a copy of a register extract.

Search requests

If you do not know the name or file number of an application, determination or ILUA or if you want to find out if there is any native title activity over a particular area you may request a search against the Tribunal's geospatial datasets.

The NNTT can identify if an area overlaps the *external boundaries* of any native title application, determination or ILUA. You can then inspect the relevant registers. Sometimes the area description in an application will not specify, by way of parcel or tenement numbers, all the areas within the external boundary that are excluded from the application (for example, areas where native title has been extinguished are usually excluded). This may require detailed geospatial analysis and legal advice.

To request a search, you will need to fill out a search request form (available from the NNTT website at www.nntt.gov.au or from your local registry) and e-mail, fax or mail it to the NNTT, clearly identifying the area you are interested in. The NNTT may charge a fee for this and other geospatial services, although basic searches are provided free of charge to:

- parties to a native title application
- interest holders in relation to the area covered by an application who intend to become parties
- parties to negotiations of an ILUA
- persons objecting to the registration of an ILUA

- state or territory government organisations
- parties involved in future act negotiations
- parties involved in statutory access negotiations, or
- people able to demonstrate financial hardship (for example, holders of Commonwealth health care or concession cards).

Please contact your local registry on freecall 1800 640 501 for more information on making a search request.

Checking the registers and databases regularly

The information held on the registers, database and spatial datasets may change for a variety of reasons, even within a twenty-four hour period, so you should obtain register extracts and application summaries more than once while applying for a mineral tenement, or negotiating an ILUA.

Information may change quickly if a new or existing native title application is registered or an existing application is amended or determined.

List of terms

Applicant (to a native title application): Usually a reference to the person or persons, authorised by the native title claim group to make an application for a determination of native title or an application for compensation and to deal with all matters arising under the NTA in relation to that application. The term also refers to those making a non-claimant application for a determination of native title or a revised native title determination application (ss. 61(2) and 62A NTA).

Approved Determination of native title: A decision by the Federal Court or the High Court of Australia or a recognised body that native title either does or does not exist in relation to a particular area of land or waters (ss. 13 and 225 NTA). To date the only bodies recognised under s. 207A of the NTA are the Supreme Court of South Australia and the Environment, Resources and Development Court of South Australia.

Future act: A proposal to do something (e.g. pass legislation or permit a development on a particular area) that will affect native title (or would if the act were valid to that extent) by extinguishing it or creating interests that are inconsistent with the continued existence, enjoyment or exercise of native title. Examples of future acts include the grant of mining or exploration rights and the compulsory acquisition of native title.

The NTA gives native title holders and registered native title claimants procedural rights in relation to certain future acts. Depending on the type of future act these rights range from being notified, to being given an opportunity to comment, through to the right to negotiate. For some future acts, for example the renewal of certain interests over the same area on the same terms, there are no procedural rights (Part 2 Division 3 NTA).

Indigenous land use agreement: A voluntary agreement about the use and management of an area of land or waters where native title exists or might exist. The agreement is made between one or more native title groups and others (such as miners, pastoralists or governments). A registered ILUA is legally binding on the people who are parties to the agreement as well as all native title holders for that area.

National Native Title Tribunal: An independent statutory body established under s. 107 Part 6 of the NTA to assist people to resolve native title issues. The Tribunal has a number of powers and functions under the NTA including:

- mediating between the parties to native title applications at the direction of the Federal Court (Part 6, Divs 4 to 4AA, Division 5, Subdiv AA),
- acting as an arbitrator (or umpire) in situations where the people cannot reach agreement about certain future acts, such as mining projects. In South Australia the NNTT only performs this role in relation to the grant of petroleum tenements. The Supreme Court and the Environment, Resources and Development Court undertake this function in relation to the doing of certain other future acts under the alternate right to negotiate provisions that operate in South Australia.
- helping people to negotiate indigenous land use agreements (ss. 24BF, 24CF and 24DG) and determining any valid objection to the registration of an Alternative Procedure Agreement (a type of ILUA) (Part 6 Division 5 NTA).

Native title: The communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders in relation to land and waters, possessed under traditional law and custom, by which those people have a connection with an area which is recognised under Australian law (s. 223 NTA).

Native title claimant application: An application for a determination that native title exists. Claimant applications are usually filed with the Federal Court of Australia. The Court usually decides whether native title exists or not by making a native title determination.

Native title claim group: Those people who claim to hold native title over an area of land or waters, and who have authorised a person or persons to make an application for a determination of native title under the NTA .

Native Title Registrar: A statutory office holder appointed under s. 95 of the NTA who, among other things:

- applies the registration to test to claimant applications
- assesses applications for the registration of ILUAs
- gives notice of all applications for a determination of native title, compensation applications, revised native title determination applications and applications for the registration of ILUAs
- provides certain forms of assistance
- maintains the National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements.
- The Registrar may delegate his or her powers to make these decisions to an employee of the National Native Title Tribunal (a delegate) (s. 99 NTA).

Non-claimant application: An application made by a person, who holds a non-native title interest in relation to an area, and is seeking a determination that native title does not exist in that area.

Prescribed body corporate or PBC: A body nominated by native title holders which will represent them and manage their native title rights and interests once a determination that native title exists has been made. If a trustee PBC is determined, then it also is the holder of native title on trust for the common law holders (ss. 55, 56 and 57 NTA). Once the court determines that the corporation is to be the PBC, it is entered onto the National Native Title Register as a registered native title body corporate (ss. 193(2)(e) and 253 NTA).

Reconsideration by the Tribunal: If a claim is not accepted for registration under s.190A of the NTA, then (in some cases) the applicant can ask the National Native Title Tribunal to reconsider the claim made in the application for registration (s. 190E NTA).

Registered native title body corporate: A prescribed body corporate (PBC) nominated by native title holders to represent them and manage their native title rights and interests once a determination that native title exists has been made. Once the court determines that the corporation is to be the PBC, it is entered onto the National Native Title Register as a registered native title body corporate (ss. 193(2)(e) and 253 NTA).

Registered native title claimant: A person or persons whose name(s) appear on the Register of Native Title Claims as 'the applicant' in relation to a claim to hold native title in the area (s. 253 NTA).

Registration test: A set of conditions applied to each claimant application. If an application meets all the conditions, it must be included in the Register of Native Title Claims. As long as the application remains registered, the native title claimants have certain procedural rights, including the right to negotiate about certain future acts (ss. 190A to 190C NTA).

Representative Aboriginal and Torres Strait Islander Body or RATSIB: Also known as Native Title Representative Bodies (NTRBs) or representative bodies (rep bodies). These organisations are recognised and funded by the Commonwealth government to perform a wide variety of functions under the NTA. These functions include assisting and facilitating native title holders to access and exercise their rights under the NTA, certifying applications for determinations of native title and area agreements (ILUA), resolving intra-indigenous disputes, agreement making and ensuring that notices given under the NTA are brought to the attention of the relevant people. The Government can also fund other people or organisations to perform some or all of the functions of a representative body. Where a person or body is funded to perform a particular function, the references to the RATSIB in that part of the Act that relate to that function should be read to include that person or body (see Part 11 NTA).



National Native Title Tribunal



For more information about native title
and services of the NNTT please contact
the National Native Title Tribunal,
GPO Box 9973 in your capital city or
freecall 1800 640 501. Information is also available
online at www.nntf.gov.au .