

Native title rights

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, Indigenous Australians.

Over other areas, the native title bundle is most likely to be a set of non-exclusive rights (which means there is no right to control access to, and use of, the area). Examples may include the right to live on the area, hunt, fish, gather food or teach law and custom on country.

There can be no native title rights to minerals, gas or petroleum recognised under Australian law. In tidal and sea areas only non-exclusive native title can be recognised.

The National Native Title Tribunal (NNTT) is an independent federal government agency. The NNTT can respond to requests for help with:

- *negotiating agreements*
- *information about native title*
- *mediation services*
- *access to NNTT research*
- *land information, mapping and geospatial products.*

For more information about native title
and services of the NNTT please contact

National Native Title Tribunal
GPO Box 9973 in your capital city
or freecall 1800 640 501

www.nntt.gov.au

Brisbane | Cairns | Melbourne | Perth | Sydney

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National
Native Title
Tribunal

Native title: an overview



Australia's native title laws recognise some Indigenous people's rights to land and waters.

Shared country | shared future

Understanding native title

Native title is the recognition in Australian law that some Indigenous people continue to hold rights to their land and waters, which come from their traditional laws and customs.

The following conditions must be met:

- the rights and interests are possessed under the traditional laws currently acknowledged and the traditional customs currently observed by the relevant Indigenous people
- those Indigenous people have a 'connection' with the area in question by those traditional laws and customs
- the rights and interests are recognised by the common law of Australia.



1985
Eddie Mabo
and other make
a legal claim for
Murray Island

Native title has its source in the body of law and custom acknowledged and observed by the claimant's ancestors when Australia was colonised by Europeans. Those laws and customs must have been acknowledged and observed in a substantially uninterrupted way from the time of settlement until now.

Some facts about native title

Native title:

- can be extinguished (refused recognition) because of things the government has done, or allowed others to do, over a particular area that are inconsistent with native title
- is not granted by governments—it is usually recognised through a determination made by the Federal Court under the Native Title Act
- exists alongside and subject to the rights of other people in the same area
- can only be claimed on certain areas of land or water, for example on vacant or unallocated Crown land but not on residential freehold land or public works like roads, schools or hospitals.



1990
The Supreme Court of Queensland found against the Mabo claim

1992
The High Court finds for the Mabo claim and that the lands at European settlement were not "terra nullius"



The Mabo decision

In the 1992 Mabo decision, the High Court recognised that the Meriam People of the Torres Strait held native title over part of their traditional lands. This decision paved the way for Aboriginal and Torres Strait Islander people to have their native title recognised under Australian law.

It did away with the old idea that Australia was 'terra nullius' (land belonging to no one) at the time of European settlement.

The landmark decision led to the recognition and protection of native title across Australia through the introduction of the Native Title Act.

1993
The Native Title Act
is passed

1994
The NNTT established
and operating

