



National  
Native Title  
Tribunal

# Native title determinations



*Native title determinations are legal decisions that native title does or does not exist over an area.*

*Facilitating timely and effective outcomes.*

## When a determination is made

A native title determination is a decision by the Federal Court, High Court or a recognised state or territory body that native title does or doesn't exist over an area of land or water.

Where native title is recognised, the determination will identify the native title holders and describe their native title interests.

There are four kinds of applications under the Native Title Act that could lead to a determination of native title. The most common type is a claimant application, made by Indigenous Australians seeking a determination recognising that native title exists.



*The Mandingalbay Yidinji People's native title was recognised by a consent determination south east of Cairns in 2006.*

The other native title applications are:

- a non-Indigenous person seeking a determination that native title does not exist
- a request to the court to revise or revoke an existing native title determination
- a claim for compensation for loss or impairment of native title.

## Types of determinations

There are three processes that can lead to a native title determination.

If no one contests the application, the court can make what is called an unopposed determination.

If all the parties reach agreement about native title through mediation, then a consent determination can be made by the court.

A litigated determination is made after a trial, in which the parties put forward the case for and against recognising native title.

Reaching an agreement through mediation is usually less costly than litigation. It may also allow parties to establish and maintain day-to-day relationships with each other.

By mediating, parties have more control over the outcome, which can be specifically designed to address each party's concerns and interests.

A native title determination application may be mediated by the National Native Title Tribunal, or another person or organisation, to help the parties reach agreement.

If the parties to the native title determination application do not reach an agreement, the court will order that it go to trial.

The time it might take to resolve an application through mediation varies depending on the willingness of the people involved to reach agreements and the complexity of the claim.

External factors, such as the availability of resources, may also affect the progress of mediation.

The parties involved in mediation may decide to settle the claim by making an agreement, including an

indigenous land use agreement (ILUA). A significant part of the Native Title Act addresses issues relating to making ILUAs.



Traditional owner Nyaparur Rose (left) with Federal Court Justice Tony North and dancers at the Nyangumarta native title determination in WA's north west in 2009.

### What kinds of rights can be recognised in a native title determination?

A determination of native title will state whether or not native title exists over the area claimed in the application.

If native title is found to exist, the determination will go on to specify both who holds it and the content of their native title rights and interests.

It will also recognise the non-native title rights and interests in the area and set out the basic grounds for the coexistence of those two sets of rights.

The content of the native title bundle of rights will depend on the native title holders' traditional laws and customs and on the capacity of Australian law to recognise the rights and interests they hold under those laws and customs.

For example, the existence of other rights and interests



The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Peoples were the first groups to have their native title rights recognised by consent in Victoria. Justice Ronald Merkel made the consent determinations at Little Desert National Park in the Wimmera region in December 2005.

over the same area may prevent native title being recognised or limit its content.

The native title bundle of rights may include the right to possess, occupy, use and enjoy a particular area to the exclusion of all others (often called a right of exclusive possession). This right can only be recognised in limited parts of Australia, such as areas where the only other interest holder is the Crown (called unallocated or vacant Crown land) or some areas already held by or for Indigenous people.

Over other areas, the native title bundle of rights 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.

Cover picture: Mornington Island traditional owner Karen Chong with her grandchildren at the Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples' native title determination in December 2008  
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These may include the right to:

- live on the area
- access the area for traditional purposes, like camping or conducting ceremonies
- visit and protect important places and sites
- hunt, fish and gather food or traditional resources like water, wood and ochre
- 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.

Whether exclusive or not, native title:

- is subject to regulation by Australian law in the same way as other people's rights
- does not give native title holders the right to veto future developments but may mean their rights and interests need to be taken into account.



For more information about native title and services of the Tribunal please contact the National Native Title Tribunal, GPO Box 9973 in your capital city or **Freecall 1800 640 501**. Information is also available at [www.nntf.gov.au](http://www.nntf.gov.au).

The National Native Title Tribunal has offices in Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth and Sydney.

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