

Queensland Government Native Title Work Procedures

Annexure 8.1

Glossary of terms

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Annexure 8.1

Glossary of terms

This annexure provides a glossary of terms relating to native title, and land tenure and use, that are relevant to the carrying out of your native title assessment under the Procedures.

If you have any queries in relation to the definitions in the Glossary, please contact your Native Title Contact Officer (NTCO). If your NTCO is unable to answer your query, your NTCO should contact Aboriginal and Torres Strait Islander Land Services (ATSILS).

Aboriginal and Torres Strait Islander deeds of grant in trust (ATSI DOGITs)

A freehold grant held in trust (a form of land tenure) under the *Land Act 1962* for the benefit of the Aboriginal or Islander inhabitants or for Aboriginal or Torres Strait Islander purposes under the *Land Act 1994*. These are sometimes called ATSI DOGITs.

Examples - Woorabinda, Saibai Island.

Unlike ordinary freehold, there are restrictions such as the land cannot be sold (inalienable) but the trustee can lease areas, e.g. for a business.

Aboriginal or Torres Strait Islander freehold

A grant of freehold (a form of land tenure) under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991* held by a land trust for the benefit of Aboriginal people, Torres Strait Islander people or a specific group of Aboriginal people or Torres Strait Islanders and their ancestors and descendants.

Examples - Lockhart River Mangkuma Land Trust land, Tudu and Gabba Islands.

Unlike ordinary freehold, there are restrictions such as the land cannot be sold (inalienable) but the land trust can lease areas, e.g. for a business.

Aboriginal or Torres Strait Islander reserve

A form of land tenure where land is dedicated under the *Land Act 1994* or previous land legislation for purposes such as Aboriginal,

Aboriginal reserve, the benefit of Aboriginal inhabitants, Torres Strait Islander or the benefit of Islander inhabitants.

Example - Daintree Aboriginal Reserve.

Agricultural lease

Refer to Module BA, Module GB, Module GD or Module GE.

ALA

Aboriginal Land Act 1991.

ATS

Automated Titling System (DNRME corporate information system).

ATSILS

Aboriginal and Torres Strait Islander Land Services.

Claimant application

An application filed in the Federal Court, by authorised applicants on behalf of the claimant group, seeking a determination that native title exists over a particular area of land and/or waters.

Commercial lease

A type of PEPA. Refer to Module BA.

Community purposes lease

A type of PEPA. Refer to Module BA.

Compulsory acquisition

The permanent taking of all rights and interests in relation to a particular area. In

Queensland, the legislation that generally applies is the *Acquisition of Land Act 1967*, although there are other acquisition powers found in specific legislation. The *Native Title (Queensland) Act 1993* provides which acquisition legislation can be used to take native title rights and interests in the land.

Current tenure status

This term refers to the current land tenure, interest or lack of tenure or interest over a particular area. For example - freehold, lease, reserve, exploration permit, unallocated State land.

DNRME

Department of Natural Resources, Mines and Energy

Determination

A determination of native title is a decision made either by the Federal Court or High Court of Australia as to whether or not native title exists over a particular area of land and/or waters.

A determination identifies the native title rights and interests, the holders of those rights and interests and the land and waters to which the rights and interests relate.

DOGIT

Deed of grant in trust. A freehold grant held in trust (a form of land tenure) granted under current and previous land legislation for a particular purpose, e.g. A Deed of Grant for racecourse purposes. Unlike ordinary freehold, there are certain restrictions such as the land cannot be sold (inalienable) but the trustee can lease areas.

Exclusive agricultural lease

A type of PEPA. Refer to Module BA.

Exclusive pastoral lease

A type of PEPA. Refer to Module BA.

Exclusive possession lease

A type of PEPA. It is a lease conferring a right of exclusive possession on the lessee (cannot

be a mining lease). Refer to Module BA and Module IB.

Executive authority action

Documents approved by the Governor in Council. For example, a title document (freehold grant), a lease instrument or a proclamation or Order in Council in the Government Gazette. On a title or lease instrument the executive authority action is evidenced by the Governor's signature and seal of the State of Queensland.

Expiry of native title

Native title cannot be recognised over an area because the native title group has not established all the elements of native title, e.g. loss of connection. See the elements in 'native title'.

This is different from the extinguishment or surrender of native title.

Extinguishment

Native title can be extinguished only in accordance with the Commonwealth *Native Title Act 1993* (NTA).

Extinguishment means permanently extinguish. This means that after the extinguishment occurs the native title rights and interests cannot revive, even if the act that caused the extinguishment ceases. For example, if a valid public work was constructed and was later removed, the native title rights and interests cannot revive.

However, the NTA provides some exceptions to this rule allowing certain extinguishing acts to be ignored so that native title can be recognised. This is subject to a number of specific pre-conditions such as the timing of the claim, the tenure status of the land and whether there is 'occupation' when the claim was made.

As native title is a bundle of rights, some inconsistent actions extinguish all native title, whilst other actions only extinguish some native title rights and interests.

Facility operated for the general public

These are facilities listed in Module K that are operated for the general public. These facilities are **not** public works.

Fixture

Refer to Module CA and Module L.

Freehold (ordinary freehold)

This is a form of land tenure providing the holder of the freehold title with the right of exclusive possession, i.e. an ability to exclude others from their land, no restrictions on the right to sell the land but the use of the land may be restricted by planning laws.

Freehold test

This is a test used in Module M&N that basically places a native title holder in the same position as a freeholder to see whether you can do the proposed dealing. Refer to Module M&N.

Future act

A grant of an interest, the doing of an activity or carrying out development on land/waters that affects native title (i.e. interferes with its enjoyment or exercise).

Some future acts extinguish native title whilst others suppress native title (the non-extinguishment principle) as set out in the Commonwealth *Native Title Act 1993*.

Examples of future acts include the:

- registration of a trustee lease
- grant of a trustee permit
- construction of a community hall or public housing.

Grant

This is the action done under legislation that provides a person with an interest in the land or waters. For example, the grant of freehold by the Governor under the *Land Act 1994*.

ILUA

An Indigenous land use agreement (ILUA) is a voluntary agreement about the use and

management of an area of land or waters made between one or more native title parties, and others such as the State, a developer or a mining company.

An ILUA once registered by the National Native Title Tribunal is legally binding on the people who are parties to the agreement, and all native title holders (and their successors) for that area.

For example, an ILUA could be used to provide the consent of the native title holders for works required to be carried out by the relevant Council, e.g. the development of a new dam.

In trust

To grant 'in trust' means that the grant is held by one person/s or body for the benefit of another or others.

For example, if an Aboriginal deed of grant in trust is granted to an Aboriginal Shire Council, the grant is not for the benefit of the Council but is for the benefit of the Aboriginal inhabitants of that community which may include native title holders, traditional owners and historical owners.

Indigenous cultural heritage

In Queensland, all significant Aboriginal and Torres Strait Islander cultural heritage is protected under the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*.

These Acts require anyone who carries out an activity to exercise a duty of care, that is, they must take all reasonable and practicable measures to ensure their activity does not harm Indigenous cultural heritage. Penalties apply for unauthorised harm.

Indigenous land

- Freehold granted under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*.

- Deed of grant in trust for Aboriginal or Torres Strait Islander purposes under the *Land Act 1962* or *Land Act 1994*.
- Aurukun and Mornington Shire leases under the *Local Government (Aboriginal Lands) Act 1978*.
- Reserves for Aboriginal or Torres Strait Islander purposes gazetted under various land legislation.

Intermediate period act

An act done between and including 1 January 1994 and 23 December 1996 that would have been valid but for native title. This is the period where many dealings would have occurred on the basis that native title was thought to have been extinguished by a pastoral lease until the High Court in *Wik* (*Commonwealth Native Title Act 1993*) found that that assumption was not necessarily correct. Refer to Module E.

Land tenure

Land tenure is the term commonly used to describe different interests in the land. For example, freehold, leases, reserves, etc. Each tenure has different rights, responsibilities and restrictions.

Native title is not a land tenure. See 'native title'.

Lease

This is a form of land tenure. There are many different types of leases, e.g. pastoral holding, trustee lease, perpetual lease, sub-lease of a Shire lease, etc. A lease can be for a term of years (e.g. 30 years) or have no term (i.e. perpetual).

Example - The grant of a trustee lease on an Aboriginal Deed of Grant in Trust to Queensland Health to construct a health centre.

Mabo No.2

Landmark 1992 Australian High Court case which overturned the concept of *terra nullius* (land belonging by no-one) at the time of British colonisation in 1788, and recognised the existence of native title.

Mining lease

Refer to Module BA.

NNTT

The National Native Title Tribunal is the independent body established under the NTA to carry out certain functions and to assist people in processes under the NTA. Visit the NNTT website.

NTA

Commonwealth Native Title Act 1993.

The Commonwealth passed the NTA in response to the Mabo No. 2 decision to provide for the recognition and protection of native title

NTQA

Native Title (Queensland Act) 1993.

NTCO

Native Title Contact Officer.

Native title

Native title is a bundle of rights and interests - i.e. the communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders based in traditional laws and customs and through which they have a connection with the land or waters. Further, the native title group, laws and customs, and the native title rights and interests must have been in existence since sovereignty without any substantial interruption to their continuation.

Native title cannot be sold and can only be surrendered to the Crown (the State).

Native title assessment

A native title assessment involves assessing whether native title may still exist over the proposed dealing area (i.e. has native title been extinguished?). Where native title may continue to exist, it also involves assessing the future act provision of the NTA that applies and the associated procedural rights to be provided. A native title assessment ensures

that the proposed dealing is valid as against native title. It should be recorded on the native title assessment form at Annexure 7.1.

Native title claimant application

An application for the legal recognition of native title over a particular area of land and waters. Native title claimant applications are filed in the Federal Court of Australia.

Native title claimant applications are often referred to as native title claims.

Native title holder

A native title holder is the person or persons who hold native title.

Where there has been a determination of native title, the registered native title body corporate becomes the native title holder where it holds the native title on trust.

Native Title Representative Body (NTRB)

An NTRB is a regional organisation appointed by the Commonwealth Minister responsible for the NTA, to represent Indigenous Australians in native title issues in a particular region.

NTRBs provide native title services to persons who hold or may hold native title in their area or part of their area, and registered native title bodies corporate who represent those native title holders.

Examples - Cape York Land Council, Torres Strait Regional Authority.

Native Title Service Delivery Agency (NTSDA)

A native title service delivery agency (NTSDA) is an *alternate* to a NTRB and provides professional services to native title parties in a particular representative area in accordance with the NTA. A NTSDA is a private corporation and receives funding under the NTA from the Australian government to perform the majority of functions of a NTRB, and has the same obligations and powers in relation to those functions as a NTRB.

Non-claimant application

An application filed in the Federal Court by a non-native title party over a particular area seeking a determination as to whether native title exists. Refer to Module F and Module R.

Non-extinguishment principle

As set out in the Commonwealth *Native Title Act 1993* (NTA) a future act in most cases does not extinguish native title but only suppresses native title for the time the future act exists. This means that during that time those native title rights and interests inconsistent with the future act are not able to be exercised or enjoyed.

When the future act ceases to exist, the affected native title rights and interests again have full effect and can be fully exercised and enjoyed.

Example - the construction of a road under section 24KA of the NTA suppresses the exercise and enjoyment of native title over the road area whilst the road is in existence.

Offshore place

Refer to Module N.

Onshore place

Refer to Module M.

Past act

Refer to Module E.

Pastoral lease

Refer to Module BA, Module GB, Module GD or Module GE.

PEPA

Previous exclusive possession act (PEPA). Subject to requirements being satisfied, a PEPA can be the grant of freehold or a lease, a vesting or a public work. Refer to Module BA, Module CA and Module CB.

PNEPA

Previous non-exclusive possession act (PNEPA). Refer to the information box in Part 6 of Module BA.

PBC

Under the NTA, native title holders who have a determination of native title must establish a body to represent them as a group and manage their native title rights and interests. This body is called the 'prescribed body corporate' (PBC).

The PBC is registered on the National Native Title Register and becomes a registered native title body corporate (RNTBC). In some cases it will hold the determined native title on trust or act as agent for the native title holders.

Where the RNTBC holds the native title on trust, it becomes the native title holder.

Primary production activity

Refer to Modules GB, GD and GE.

Proposed dealing

The proposed dealing is what you are considering granting, authorising or constructing. For example, the grant of freehold, the construction of a public work or the grant of an authority. Refer to Module AA.

Proposed dealing area

The proposed dealing area is the area over which the proposed dealing will be done. Refer to Module AA.

Public work

A type of PEPA. Refer to Module CA and Module CB.

QNTIME

Queensland Native Title Information Management Environment (whole of government corporate information system hosted by DNRME) that contains textual and spatial native title data. Refer to the Introduction of the Procedures. If you wish to access QNTIME, you must have a username and password issued to you from the system administrator
QNTIMEsysadmin@dnrme.qld.gov.au

RDA

Commonwealth *Racial Discrimination Act 1975*.

Registration test

A set of conditions under the Commonwealth *Native Title Act 1993* (NTA) that is applied to native title determination applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the now registered native title claimants are entitled to a number of procedural rights under the NTA for the doing of future acts.

Register of native title claims

The Register of Native Title Claims is maintained by the National Native Title Tribunal and records information relating to those claims that pass the registration test, such as the name of the parties, the address for service etc.

Registration of a tenure

In many cases the legal interest (the tenure) in the land is not created until it is registered in a government land register. Therefore, the rights in the land are not created when the tenure is granted but when it is registered.

For example, the trustee of a Deed of Grant in Trust can grant a trustee lease to Joe Bloggs. However, until the trustee lease is registered Joe Bloggs does not in fact have a lease.

Registered native title body corporate (RNTBC)

See 'Prescribed body corporate'.

Registered native title claimants (RNTC)

Native title claimants who have met the conditions of the registration test under the Commonwealth *Native Title Act 1993*.

Reserve

A reserve is a form of land tenure. A reserve is land dedicated for a particular purpose under the *Land Act 1994* or previous land legislation. Throughout the years land has been reserved for a number of different purposes—recreation,

Aboriginal, Torres Strait Islander, health, school, quarry, departmental and official, etc.

Residential lease

A type of PEPA. Refer to Module BA.

Right to negotiate

A procedural right involving good faith negotiations with a view to reaching an agreement within a certain timeframe for the doing of certain future acts, e.g. The grant of a mining lease. Refer to Module IC and Module M&N.

Scheduled interest

A type of PEPA. Refer to Module BA.

SMIS

SmartMap Information System (DNRME corporate information system).

Sovereignty

In the context of Australia, sovereignty is when the British asserted legal control over Australia. Refer to the Introduction of the Procedures.

State

State of Queensland.

Statutory authority

Refer to Module BA and Module CA.

Surrender of native title

Native title parties can relinquish their native title rights and interests over a particular area to the State under a registered ILUA. The State must be party to the ILUA.

Tenure history

A tenure history is the process of researching land tenure back through time to establish whether the proposed dealing area was historically or currently subject to a valid grant or vesting of exclusive possession. Refer to Module BA and Module BC.

Trustee

A person can be a trustee of a reserve, deed of grant in trust or Aboriginal or Torres Strait

Islander freehold grant. The Minister appoints the trustee/s. A trustee must manage the land in accordance with their appointment and the purpose for which the land has been granted in trust.

For example, a trustee of an Aboriginal deed of grant in trust must make decisions about the land that are for the benefit of the Aboriginal inhabitants.

Trustee lease

A lease granted by the trustee over all or part of the land subject to the land tenure.

TSILA

Torres Strait Islander Land Act 1991

USL

Unallocated State land; previously referred to as vacant Crown land.

Valid

This term is used throughout the Procedures. Basically it means that (a) there must be power under State legislation, e.g. to grant a lease, construct a work; and (b) there must be compliance with the NTA and NTQA.

Wik

The High Court decision handed down on 23 December 1996 finding that pastoral leases did not necessarily wholly extinguish native title as there could be a co-existence between the rights of a lessee and a native title holder.