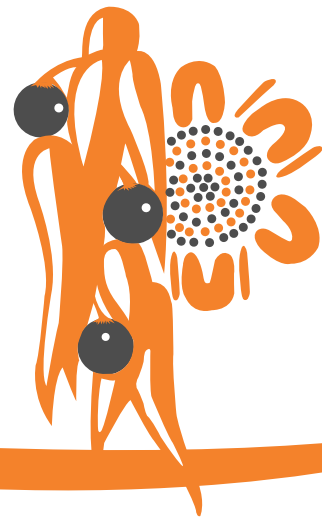


Native Title Checklist for Social Planners/Community Development Officers



What is native title?

Native title is the term used by the High Court to recognise certain communal, group or individual rights of Aboriginal and Torres Strait Islander people in land and waters according to their traditional laws and customs.

The native title of a particular group will depend on the traditional laws and customs of those people. The content of native title may include a variety of rights and interests, such as, living, hunting, gathering, fishing, ceremonial, rights of access, use and occupation, and visiting to protect important places. It may include the right to be consulted about decisions or activities that could affect the enjoyment of native title rights and interests.

Where does native title exist?

Native title can only be claimed in areas where it has not been extinguished (removed). Native title may exist on:

- Unallocated Crown land;
- State forests, national parks, public reserves and certain land reserved for particular purposes or uses;
- Some kinds of Crown-to-Crown grants, including grants from a State/Territory to a local Council (except land validly granted and held in fee simple by Council);
- Land set aside for the benefit of or granted to Aboriginal and Torres Strait Islander people;
- Oceans, seas, reefs, lakes and inland waters;
- Some leases, such as non-exclusive pastoral and agricultural leases, depending on the State/Territory legislation under which they were issued.

In most areas where native title is determined by the Federal Court to exist, it will co-exist with the rights and interests of non-native title holders.

Where has native title been extinguished (removed)?

The Australian legal system does not recognise native title rights and interests in some areas where things have been done to extinguish native title. In those areas native title may be partly or wholly extinguished.

Native title has been wholly extinguished on areas such as:

- Privately owned land (including family homes and privately owned freehold farms);
- Residential, commercial, community purpose and certain other leases;
- Areas where governments have built roads, schools and other public works on or before 23 December 1996.

These areas of land cannot be included in an application for a determination of native title. They are generally excluded from the area description in the application.

What are the implications for social planners and community development officers?

Social planners and community development officers can assist Council in

- ensuring Council identifies the correct native title holders or applicants for a particular area within Council's jurisdiction;
- developing a good working relationship with native title holders or claimants and the relevant Native Title Representative Body (NTRB);
- developing appropriate consultative and participatory mechanisms between Council and the native title holders or claimants and the local Aboriginal and Torres Strait Islander community. This includes establishing and maintaining consultative mechanisms over time;
- taking action to ensure that native title rights and interests are considered in Council's strategic, corporate and operational decision making in the same way Council considers environmental and heritage matters.

How does Council contact the native title claimants?

The notification Council receives from the National Native Title Tribunal will generally include the contact details for the nominated representative of the claimants. You can contact this person or you can approach the Native Title Representative Body. The *Native Title Act 1993* (Cth) enables the Federal Minister with responsibility for Aboriginal and Torres Strait Islander matters to appoint Native Title Representative Bodies (NTRB's) to represent the interests of Aboriginal peoples or Torres Strait Islanders within a particular region on native title matters. These bodies may be local Indigenous land councils or legal aid services that have a special responsibility to assist and represent native title holders and claimants. To find the relevant NTRB for your area visit the NTRB website at www.ntrb.net

The NTRB has a responsibility to ensure you make contact with the correct traditional owners for an area. They may also be able to assist with protocols and communication with the native title holders or claimants. It is advisable therefore, to establish good working relations with the relevant NTRB.

CHECKLIST:

The Australian Local Government Association has developed a six-step Action Plan* to assist Councils in adopting a precautionary approach.

ALGA Action Plan

An Action Plan for Social Planners/ Community Development Officers

| | | |
|----------------|--|---|
| Step 1. | <p>Searching the Registers. Three formal Registers of native title and an informal Schedule of Applications are held by the National Native Title Tribunal.</p> | (See pp79-81 of WWNT Guide.) |
| Step 2. | <p>Analysing Council's responsibility for procedural rights. In certain circumstances native title holders and registered claimants (also known as applicants) are entitled to certain procedural rights. That is, the right to be notified and given an opportunity to comment, or the right to be consulted, or the right to negotiate.</p> | Social Planners and Community Development Officers need to have a general understanding of the different procedural rights that native title holders and registered native title applicants have in relation to different types of activities that affect their rights and interests. Social Planners and Community Development Officers can assist Council in developing and maintaining good working relations between native title holders/applicants, the relevant Native Title Representative Body and Council. (See pp88-93 of WWNT Guide.) |
| Step 3. | <p>Becoming a party to an application for a determination of native title. Being a party means that Council gets to join in the process and be able to participate in mediation and, if necessary, in court.</p> | Social Planners and Community Development Officers need to know if Council is party to an application for a determination of native title in the Federal Court and if Council is currently involved in mediation. (See pp95-109 of WWNT Guide.) |
| Step 4. | <p>Identifying where native title exists or has been extinguished. It is possible to identify in general terms, areas where native title exists or has been extinguished.</p> | Social Planners and Community Development Officers need to know, in general terms, where native title exists, may exist or has been extinguished, and helping the community understand the implications for Council and the community. (See pp111-151 of WWNT Guide.) |
| Step 5. | <p>Future acts: Council's responsibility for validity. There are processes under the <i>Native Title Act 1993</i> (Cth) for ensuring activities are valid and lawful in so far as they affect native title rights and interests.</p> | Social Planners and Community Development Officers can assist other Council officers with consulting and involving Indigenous people in decision making affecting their rights and interests. (See pp161-200 of WWNT Guide.) |
| Step 6. | <p>Negotiate agreements. Indigenous Land Use Agreements take precedence over all other processes and can be negotiated at any time.</p> | Social Planners and Community Development Officers can assist with developing Indigenous Land Use Agreements under the <i>Native Title Act 1993</i> (Cth). (See pp214-220 of WWNT Guide.) |

* More details on the Action Plan are contained in the ALGA's *Working with Native Title* (WWNT) Guide. Implementing the Action Plan will assist Council in making sure it fulfils its obligations in relation to native title matters.

WHO TO CONTACT FOR ASSISTANCE:

Your State/Territory Local Government Association.

Australian Local Government Association,
Phone 02 6122 9400. Email: alga@alga.com.au
Website: www.alga.com.au/nativeTitle.htm

Commonwealth Attorney-General's Department (in relation to financial assistance),
Phone 02 6250 6770. Website: www.ag.gov.au/aghomet/commaff/flad/legal_aid/ntguide.html

National Native Title Tribunal,
Phone freecall 1800 640 501. Website: www.nntt.gov.au

To find the relevant National Title Representative Body for your area visit the NTRB website at www.ntrb.net and click on the map of NTRB's for Australia.



AUSTRALIAN
LOCAL
GOVERNMENT
ASSOCIATION



ATSIC



NATIONAL NATIVE
TITLE TRIBUNAL



ATTORNEY-
GENERAL'S
DEPARTMENT