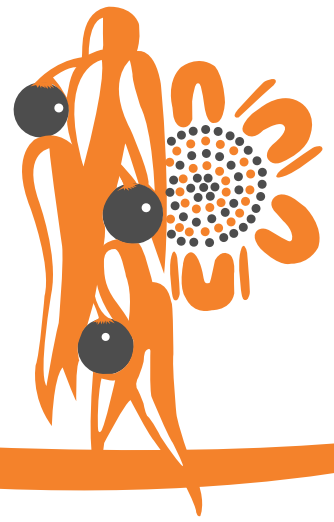


# Native Title Checklist for LG Councillors



## Local Councils and Native Title

Local Councils need to have a good understanding of the processes involved in native title legislation. As government bodies, local Councils are custodians of substantial tracts of land and carry out functions on behalf of the wider community, sometimes in areas where native title exists or may exist. Therefore, native title matters should be considered in Council's strategic, corporate and operational decision making in the same way that Council considers environmental and heritage functions.

## 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. People who hold native title have the right to continue to practice certain of their laws and customs over traditional lands and waters so long as those activities are consistent with Australian law. This 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.

The common law dealing with native title is still evolving. The Federal and High Courts continue to clarify the extent to which native title rights and interests can be recognised and protected at common law.

## What are the implications for local Councils?

Many things that Councils do in relation to land or waters may affect native title rights and interests. Previous grants, licences and public works in the region may have extinguished (removed) native title if they occurred on or before 23 December 1996. However, in some areas native title may continue to exist.

When carrying out certain types of activities or when an activity or development is planned for an area where native title exists or may exist and it affects native title, there are due processes that Councils, particularly in rural, regional and remote parts of Australia and in some coastal areas, need to follow for the activity to be valid, or for it to be immune from injunctive action. If these procedures are not followed, an activity may be invalid and the Council may at some time in the future be exposed to an injunction or claims for damages and compensation. Even where the activity would be valid notwithstanding that the processes are not followed, native title holders may succeed in getting an injunction to prevent the activity being undertaken.

## Adopting a precautionary approach

Incorporating native title matters into Council's operations will minimise the risk of future claims for damages and/or injunctions for invalid actions affecting native title rights and interests, and will minimise the potential for community division in relation to these matters.

Environmental and heritage protection legislation have evolved and developed over the last two decades and these factors are now regarded as acceptable components of sound planning and land management practices. In the same way that local Councils ensure compliance with these obligations, compliance with native title processes needs to be included as a component of any proposal for dealing with land or waters where native title exists or may exist.

## CHECKLIST:

### 1. Does your Council have an understanding of native title and its responsibilities under the *Native Title Act 1993 (Cth)*?

Councillors need to have an understanding of native title rights and interests, just as Councillors are expected to have a broad understanding of any other matters that come before Council. A number of agencies have produced information or fact sheets and other publications that can assist in developing an understanding. For further information see the contact details listed below. The Australian Local Government Association (ALGA) has produced two resource Guides especially for local Councils. Your Chief Executive Officer or General Manager may already have a copy or alternatively, a copy can be obtained from ALGA. See contact details below.

### 2. Has your Council adopted a precautionary approach and included native title in Council's strategic, corporate and operational decision making?

Council can adopt a precautionary approach by ascertaining whether any land and water within its jurisdiction, including any of Council's own land and water holdings, is subject to native title. Council should ensure that these matters are appropriately addressed in its strategic, corporate and operational decision-making. A review of existing strategic and corporate plans and operational decision-making processes may be necessary. Council may also need to alter its management practices to ensure that it does not inadvertently carry out activities in areas where native title exists or may exist without going through the correct processes. Separate checklists for various Council officers/functions are available.

### 3. Does your Council have a good working relationship with the traditional owners in your area?

If native title does continue to exist in the area within Council's jurisdiction or on any of Council's land or water holdings, it will be very important for Council to have a good working relationship with the native title holders. When an activity or development is planned in an area where native title exists or may exist, native title holders and registered native title claimants are entitled to certain procedures so that everyone's rights and interests in the area are protected as far as possible and local Councils can still get on with business. The procedures include Indigenous Land Use Agreements about the doing of certain activities.

In order for these procedures to work smoothly, a good working relationship is essential.

### 4. Things you can do to improve relations between Council and native title holders/claimants.

There are a number of things that local Councils can do to improve relations with native title holders/claimants. These include the involvement of the native title holders/claimants in the development of Council's broader strategic and corporate planning processes and the development of voluntary agreements about the use and management of land or waters. A good working relationship with the relevant Native Title Representative Body (NTRB), the body appointed by the relevant Federal Minister with responsibility for Aboriginal and Torres Strait Islander matters, to represent the interests of Indigenous people in native title matters, may be necessary.

## WHO TO CONTACT FOR ASSISTANCE:

Your State/Territory Local Government Association.

**Australian Local Government Association,**  
Phone 02 6122 9400. Email: [alga@alga.com.au](mailto:alga@alga.com.au)  
Website: [www.alga.com.au/nativeTitle.htm](http://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/aghome/commaff/flad/legal\\_aid/ntguide.html](http://www.ag.gov.au/aghome/commaff/flad/legal_aid/ntguide.html)

**National Native Title Tribunal,**  
Phone freecall 1800 640 501. Website: [www.nntt.gov.au](http://www.nntt.gov.au)

To find the relevant **National Title Representative Body** for your area visit the NTRB website at [www.ntrb.net](http://www.ntrb.net) and click on the map of NTRB's for Australia.

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