

# **Native Title : Update on Claims & Determinations**

**The following information has been compiled as part of the research program of the Parliamentary Library Service, Northern Territory Library, by Marilyn Hawthorne, Manager, Parliamentary Library Service.**

**Northern Territory Library**

**Parliamentary Library Service  
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## **Forward**

Much of the information within this document has been provided by the National Native Title Tribunal (NNTT) or gathered from their publications and website. I have included a section in the document, which outlines the type of information available from the website.

## **Background information about Native Title**

Background information on Native Title, including definitions and explanation of key concepts and issues, and an overview of the Native Title Amendment Act 1998 is available in the document:

The Native Title Debate : Background and Current Issues, Briefing Paper No 15/98 (Griffith, 1998). The executive summary for the document is available from the NSW Parliament website:

[http://www.parliament.nsw.gov.au/WEB\\_FEED/PHWeb.nsf/Parliamentary+Services!OpenFrameSet](http://www.parliament.nsw.gov.au/WEB_FEED/PHWeb.nsf/Parliamentary+Services!OpenFrameSet)

## **Number of Native Title Claimant Applications**

The number of claimant applications lodged since the Native Title Act 1993 came into force.

**Australia** - The current total of claimant applications for Australia as at March 2000 is 561. This figure allows combinations and determinations since 1994, but excludes withdrawn applications, some 200. P. Bowen, National Native Title Tribunal (personal communication, April 20, 2000).

**Northern Territory** – The current total of applications for the Northern Territory at March 2000 is 63. National Native Title Tribunal, Darwin Region (personal communication, April 11, 2000).

Note: The above figures are for claimant applications and do not include Non-Claimant, Compensation, Objection and Future Act Applications.

## **Native Title Claimant Applications – areas covered**

Mapping is available to show the geographic extent of applications and which applications have been determined.

The National Native Title Tribunal suggests that when considering the areas covered by Native Title Applications, to note that any calculation of areas covered may be

misleading if based on the external boundaries of applications. This is because areas subject to claim within application boundaries or areas excluded from claim, i.e. freehold or other tenures, may not be readily mappable and thus calculatable. D. Foster, National Native Title Tribunal (personal communication, March 14, 2000) & P. Bowen, National Native Title Tribunal (personal communication, April 20, 2000).

## **Australia**

The National Native Title Tribunal, as custodians of native title applications, arranges for the collection of geographic information that enables the mapping of Native Title applications and determinations.

See Appendix A

Diagram 1: Geographic extent of Claimant Applications as per Register of Native Title Claims (RNTC)

Diagram 2: Geographic extent of Claimant Applications as per Schedule – Federal Court status

Diagram 3: Determinations of Native Title

**Note:** These diagrams reflect the status of Claimant Applications and determinations at the time of writing this document.

## **Northern Territory**

The Northern Territory Department of Lands Planning and Environment produces the following maps in relation to native title:

*Land status maps* are produced for each claim detailing the land claimed and giving the current status of the land. These maps are available from the Department.

*The Northern Territory current Native Title Applications map* details all current claims, with a description of the claim and details of actual area. This map is updated each time there is a new claim. This map is available from the Department.

*The Northern Territory Pastoral and Aboriginal Lands map* gives details of the Land status for Northern Territory, and includes pastoral leases, Aboriginal Land and Native Title claims. This map is current to February 2000. This map is available from the Department.

**Note:** These maps have not been added to this document. The Northern Territory current Native Title Applications map, and the Northern Territory Pastoral and Aboriginal Lands map will change each time a claim is added, or a claim is determined.

## **Native Title Determinations**

### **Number of Determinations**

There have been 10 native title determinations since the Native Title Act 1993 came into force. The remainder are in or are awaiting mediation, or are in or awaiting a Federal Court Trial.

See Appendix B Determinations of Native Title Applications

### **Basis for determinations**

Native title determinations are decided in some cases by agreement and in some cases by litigation – see Appendix A - table of determinations – for details.

The Federal Court of Australian Cases database via AUSTLII (Australasian Legal Information Institute) contains the full decisions of the determinations.

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/](http://www.austlii.edu.au/au/cases/cth/federal_ct/)

Tips for searching the Austlii database:

*choose* Full Search Form

*choose* Commonwealth : Federal Court of Australia

*search* by case name using a key word from the case name.

### **Length of time for claims/determinations**

The National Native Title Tribunal website provides access to timelines of all applications. These are available as regional or national timeline documents.

The Tribunal's timeline documents provide a summary of the details of all applications. Timelines include date of lodgment and acceptance, file number, common name, general description of location and status. The timeline documents are available from the NNTT website:

<http://www.nntt.gov.au/nntt/timeline.nsf/area/homepage>

For an example of the time a Native Title determination can take – there is a case study of the Hope Vale application. The case study outlines the process from the application in July 1994 through to the consent determination in December 1997 ( National Native Title Tribunal, 1999. P18)

See Appendix C

The time frame for Native Title determinations will vary from case to case, and whether litigation or mediation is chosen as the path to resolution.

## **Agreements**

### **Native Title Agreements**

The National Native Title Tribunal has assisted with the mediating of hundreds of agreements under the Native Title Act. The agreements range from consent determinations of native title to intra-indigenous agreements of boundaries of applications.

### **Number of agreements**

At the end of 1998 there were 1349 agreements. Of this number, 257 related to native title determinations and 1092 were future act related agreements. ( National Native Title Tribunal, 1999. P15)

See Appendix D

Agreements by State and Territory, 1994-1998 (future act agreements included)

Cumulative number of native title related agreements by year (excluding future act) 1994-1998.

Major components of native title agreements (non future act) 1994-1998.

### **Future Act regime**

The future act regime, set up by the Native Title Act 1993, provides a scheme which allows land management and development where native title may be affected. The Registered Native Title parties negotiate with the grantee party (the company seeking to develop or mine) and the state/territory government. If agreement cannot be reached the Native Title Tribunal can arbitrate. ( National Native Title Tribunal, 1999, P28)

The Native Title Amendment Act 1998 now requires all parties to negotiate in good faith – previously this was only a requirement for government ( National Native Title Tribunal Annual Report, 1999, P43 ).

### **Indigenous land use agreements (ILUAs)**

Indigenous land use agreements (ILUAs) are agreements which have resulted from the Native Title Amendment Act 1998. ILUAs are voluntary, legally binding agreements that can cover a range of land use matters. ILUA's are registered under the Act and become a contract among the parties and native title holders ( National Native Title Tribunal Annual Report, 1999, P10 ).

ILUAs may cover any matter concerning native title rights and interests including:

- some types of proposed future development;

- actions in relation to compensation applications;
  - the relationship of native title rights and interests to other rights and interests in an area;
  - how native title is exercised; and
  - surrender of native title.
- (NNTT website)

### **The National Native Title Tribunal website for more information**

**The National Native Title Tribunal website is at:**

<http://www.nntt.gov.au/>

The website is a comprehensive information source. Information at this site includes:

Question & Answers, Media Releases, How to Apply, Official Guidelines, Timelines, Determinations, Agreements, Research, Publications, Feedback, and Search.

Of particular interest to all those with an interest in Native Title is the research exchange, which can be found at:

<http://www.nntt.gov.au/nntt/research.nsf/area/homepage>

#### **Research Exchange**

The research exchange is described as follows:

The site has details of research about native title and its interactions with law; anthropology; marine, mining, pastoral and tourism industries; the environment; land management; politics; compensation; local government; management of waters; and regional land planning. The database of works is updated regularly with new information and descriptions of the research and the email addresses of authors who can be contacted for more information.

#### **Regional Bibliographies**

Part of the research exchange is the Regional Bibliographies – described as follows:

The National Native Title Tribunal has a multi-disciplinary Research Unit and a specialist Library network that undertakes research and identifies materials relating to native title applications, associated Aboriginal language groups and the broader community within those regions.

I have listed the regional bibliographies available for native title applications in the Northern Territory.

See Appendix E

## **Appendix A**

### **Mapping information and diagrams from the National Native Title Tribunal**

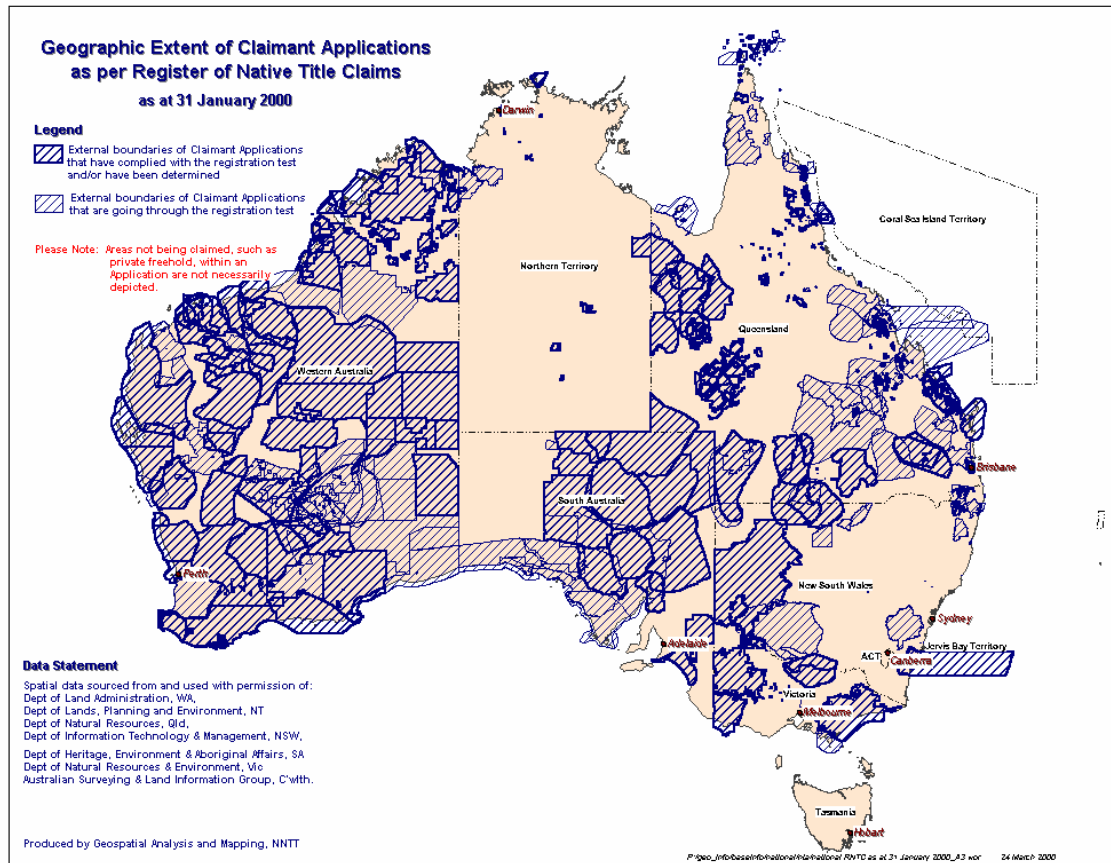
The Tribunal is a Commonwealth Government body established on 1 January 1994 under the Native Title Act 1993. Its function is to facilitate the making of agreements among Aboriginal and Torres Strait Islander people, governments, industry and others whose rights or interests may co-exist with native title rights and interests. Significant amendments made to the Act in 1998 have placed a greater reliance on both the spatial definition of applications and their spatial relationships with other matters. The role of the Federal Court in proceedings has also been significantly increased.

As custodian of information relating to applications for native title and Indigenous Land Use Agreements, the Tribunal has put in place specific protocols that enable the mapping of these areas – spatially referenced to jurisdictions reference data. An ongoing maintenance of these areas is also required as a result of amendments made through the Courts. Descriptions and maps included with applications for native title must be able to define areas being claimed with reasonable certainty.

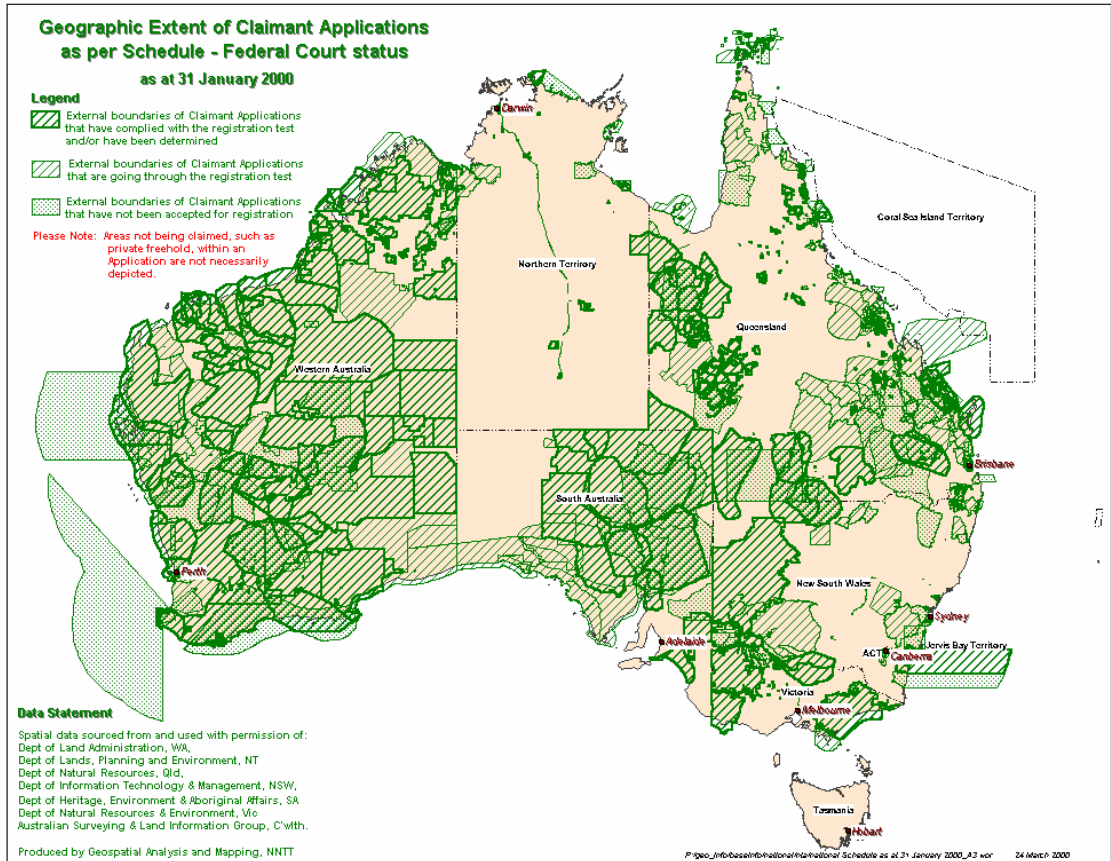
In addition to defining areas being claimed the Tribunal has a statutory requirement to notify persons who hold an interest in any such area. This requires access to land related records held by States and Territory governments and current contact details.

Once a determination of native title has been finalised by the Court the Tribunal has a statutory function to notify the respective State or Territory custodian of land administration of this matter. How the custodian records this information in their systems is at their discretion however any future land administration or management over the area determined would require consideration of the native title holders.

The following diagrams provide a status report on native title applications and determinations as at 31 January 2000. An explanatory note is provided for each.



**Diagram 1: Geographic extent of Claimant Applications as per Register of Native Title Claims (RNTC)**



**Diagram 2: Geographic extent of Claimant Applications as per Schedule – Federal Court status**



## **EXPLANATION OF NATIVE TITLE DIAGRAMS**

### **Diagram 1: Geographic extent of Claimant Applications as per Register of Native Title Claims (RNTC)**

Register of Native Title Claims (*s185, Native Title Act (C'wth)*) is a register (required to be established) containing information about each claim.

The transitional provisions of the amended Act required that all applications held on the Register at the time of the New Act would undergo the Registration Test (*s190A*), with the exception of those applications already determined or those lodged prior to 27 June 1999. In the latter case, if these applications were subject to a *s29* notice or any part of the area claimed was covered by a freehold estate or a lease, then *s190A* would be applied.

The map depicts the boundaries of Claimant Applications (these vary from being described as external boundaries with areas excluded to discrete boundaries of areas being claimed) and their status with respect to the Register. All applications on the Register have the Right to Negotiate (RTN) for a small class of future acts over areas being claimed within their application. Those that have complied with the *s190A* registration test have had these RTN confirmed.

Applications that do not comply with the Registration Test are removed from the Register, as are applications withdrawn, discontinued, rejected or struck out.

Whilst applications that are determined are recorded on a separate register, explained later, they also remain on the Register of Native Title Claims until otherwise finalised. An example may be where an appeal is lodged against a determination, such as the Yorta Yorta case.

### **Map 2: Geographic extent of Claimant Applications as per Schedule – Federal Court status**

As part of the transitional provisions of the amended Act all applications were taken to have been filed in the Federal Court. Any changes to these applications and the filing of new applications would be through the Federal Court.

As part of the transition information on these matters has been recorded by the Tribunal in a Schedule – Federal Court status.

The map depicts the boundaries of Claimant Applications (these vary from being described as external boundaries with areas excluded to discrete boundaries of areas being claimed) as they have been recognised by the Federal Court process.

Where the boundary of an application has been amended in the Federal Court, this is the boundary shown rather than the boundary as per the Register of NTC. Amended applications are required to be re-tested under *s190A*. If the amended application is accepted for registration the Register of NTC is updated to reflect the amendment.

The applications shown on the map include Registered Applications – ie those that have complied with s190A and those pre amendment Act applications where s190A is being applied, Unregistered Applications – ie those that have not been accepted for registration, and new applications where s190A is also being applied. Determined applications are also depicted.

### **Map 3: Determinations of Native Title**

National Native Title Register (*s192, Native Title Act (C'wth)*) is a register (required to be established) containing information about each determination of native title by the Federal Court or High Court, recognised State/Territory bodies, or other determinations of or in relation to native title in decisions of courts or tribunals.

The map depicts the boundaries of Claimant and Non Claimant Applications that have been determined or in some cases due to scale, by symbols representing the location of the application. Where only part of an application has been determined, the application area has not been shown. Actual mapping of areas determined has yet to be undertaken and will most likely be completed on a case by case basis.

Determinations have been categorised into two classes – native title determined to exist or native title determined not to exist. It has been noted that some areas of determination are subject to appeal in either the Federal or High Courts. (Bowen, NNTT, 2000).

## Appendix B                      Determinations of Native Title Applications

Claim Name	Location	NNTT Number	Date	Method
Meriam/Mabo <sup>1</sup>	Torres Strait, QLD	QCX94/1	3/6/1992	Litigated outcome
Crescent Head/Dunghutti	near Kempsey, NSW	NC94/5	7/4/1997	Consent determination
Hopevale	near Cooktown, QLD	QC96/15	8/12/1997	Consent determination
Croker Island	north east of Darwin, NT	DC94/6	6/7/1998	Litigated outcome*
Western (Sunset) Yalanji	near Cairns, QLD	QC95/10	28/9/1998	Consent determination
Miriuwong-Gajerrong #1	near Kununurra, WA	WC94/2	24/11/1998	Litigated outcome
Yorta Yorta	VIC/NSW border	VC94/1	18/12/1998	Litigated outcome – native title <u>does not</u> exist*
Mualgal (Moa Island)	Torres Strait, QLD	QC96/20	12/2/1999	Consent determination
Saibai Island	Torres Strait, QLD	QC95/13	12/2/1999	Consent determination
Arrernte (Hayes)	Alice Springs, NT	DC94/2	9/9/1999	Litigated determination

<sup>1</sup>Outcome the result of common law pursuit of native title rights. \*under appeal

# Duffy's Forest	NSW	NN97/017	31/3/98	Litigated determination
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# Non-claimant application.

## **Appendix C**

**(not available electronically – see printed version)**

Hopevale case study. An example of the length of time of a determination. Outlines the process from the application in July 1994 through to the consent determination in December 1997 ( National Native Title Tribunal, 1999. P18)

**Appendix D**

**(not available electronically – see printed version)**

Agreements by State and Territory, 1994-1998 (future act agreements included)

Cumulative number of native title related agreements by year (excluding future act) 1994-1998.

Major components of native title agreements (non future act) 1994-1998.

From the document

Native title : a five year retrospective 1994 – 1998, p.15 – 17.

## Appendix E

### Regional bibliographies available for native title applications in the Northern Territory.

10/04/97 Davenport-Murchison (DC95/3) Native Title Application Bibliography	A list of materials which relate to the Davenport-Murchison Native Title Application in the Tennant Creek region of the Northern Territory
10/04/97 Suplejack (DPA95/2) Compensation Determination Application Bibliography	A list of available materials which relate to the Suplejack Compensation Determination Application in the Tanami Desert Region of the Northern Territory
08/09/98 Town of Yulara (DPA97/1) Compensation Determination Application Bibliography	A list of available materials which relate to the Town of Yulara Compensation Determination Application and surrounding area.
09/09/98 Mirrar Gundjehmi (DC97/7) Native Title Application (on Jabiru) in the Kakadu National Park Bibliography	A list of available materials which relate to the Mirrar Gundjehmi Native Title Application (on Jabiru) in the Kakadu National Park region of Northern Territory

(NNTT website)

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The Federal Court of Australian Cases database via AUSTLII (Australasian Legal Information Institute)

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/](http://www.austlii.edu.au/au/cases/cth/federal_ct/)

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