

Native title non-claimant applications

Non-claimant applications can allow for Crown land dealings and activities to proceed where there is no future act pathway and a native title claim or determination has not been made under the Commonwealth *Native Title Act 1993*.

Background to native title

Native title is the name Australian law gives to the traditional ownership of land and waters that have always belonged to Aboriginal people according to their traditions, laws and customs. The Commonwealth *Native Title Act 1993* (the Native Title Act) sets out how native title rights are to be recognised and protected.

The Department of Planning and Environment – Crown Lands (the department) is committed to managing Crown land consistently with the Native Title Act.

The native title future acts regime

Certain acts that affect native title are classed as 'future acts' under the Native Title Act. For example, future acts can include the grant or renewal of leases, licences and permits.

The future acts regime in the Native Title Act establishes procedures to be followed so that the future act can be validly done. The procedures differ depending on the type of future act.

When a proposed future act does not otherwise comply with the native title future acts regime, a person may consider seeking protection to do the future act by lodging what is known as a native title non-claimant application.

About non-claimant applications

What is a non-claimant application?

Under the Native Title Act, a non-claimant application is an application to the Federal Court by a person or entity seeking a determination as to whether or not native title exists over that area.

A non-claimant application is made by a party that has an interest in the land and waters that is not a native title interest. Persons or Ministers can file them when seeking to undertake dealings or activities on land or waters where no determination of native title has been made and it is unclear if native title exists. This is because certain acts done over land or waters where native title exists will affect native title and the Native Title Act may not permit them to occur without protection being in place.

The effect of a non-claimant application

If there is no native title claimant application made in response to a non-claimant application and it is unopposed, it will result in protection being triggered which may be relied on by the applicant.

Once the protection period starts, the applicant (and others) can conduct any future acts which will be valid under the Native Title Act.

Who can make a non-claimant application?

Parties able to make a non-claimant application include:

- A person holding a non-native title interest in relation to the area in which the determination is sought e.g. Councils, Aboriginal Land Councils, holders of leases or licences; or
- The Commonwealth Minister; or
- The relevant State Minister.

Council interest in the land

If a Council wants to lodge a non-claimant application, it needs to be an appointed Crown land manager or hold a valid tenure to have a necessary interest in the land. If a Council does not have an existing interest in the land, they should contact the Department.

When to consider making a non-claimant application

Firstly, it is important to understand whether the proposed dealing or activity can be completed under other provisions of the future acts regime. If it can be, there is no need to lodge a non-claimant application.

For example, a Council Crown land manager may consider lodging a non-claimant application if they are seeking to do something such as issuing a lease on Crown land that was reserved after 23 December 1996, where this dealing does not comply with other provisions of the future acts regime.

Applications should only be made where necessary. They are lodged in unique situations to undertake future acts under the Native Title Act and usually do not progress beyond the (initial) protection to the point where a determination is made by the Federal Court.

It is important to check for the presence of any native title claims in the area before lodging an application as a non-claimant application may not be eligible to proceed.

What you need to do

The effort, time and cost involved with a non-claimant application largely depends on what the other interests in the land are, and how long it takes to do the future acts. Costs depend on the complexity involved with the proceedings and the legal representatives needed.

Applicants are expected to complete necessary searches and have associated paperwork ready to action to do the future acts before lodging their application. This will ensure the applicant can move quickly if they receive protection to do the future acts and the proceedings can be withdrawn as soon as possible. To lodge an application that is seeking protection, not a determination, the

applicant does not have to have evidence of previous exclusive possession acts that may have extinguished native title.

Straightforward applications are mostly procedural, taking approximately 3-4 months to receive protection and then the length of time for the future acts to be done, which can be 12-18 months.

Applications may become complex and take longer if parties to the proceedings have concerns and make submissions to the Federal Court that require discussions or mediation to occur.

Further information about the application process

For more information about how to make a non-claimant application, refer to the [how-to guide](#).

Contact

For more information, please contact the Council Crown Land Manager team at:

Ph: 1300 886 235

Email: council.clm@crownland.nsw.gov.au

Legislation

- *Native Title Act 1993* (Commonwealth)
- *Crown Land Management Act 2016* (NSW)

Resources

- [National Native Title Tribunal website](#)
- [Federal Court of Australia forms website](#)
- [Crown Land Manager website](#)