



# What kind of areas can be claimed in a native title application?

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

- vacant (unallocated) Crown land
- some state forests, national parks and public reserves, depending on the effect of state or territory legislation establishing and possibly vesting those parks and reserves
- oceans, seas, reefs, lakes and inland waters
- some leases, such as non-exclusive pastoral and agricultural leases, depending on the state or territory legislation they were issued under.

Generally speaking, full native title rights resembling anything like ownership will only be available over some vacant Crown land, certain Aboriginal reserves and some pastoral leases held by native title holders.

This means that, for most of the areas where native title is successfully claimed, the country will be shared by the native title holders and other people with rights and interests in the same area.

This sharing is sometimes called **coexistence**. It means that native title rights can exist and be exercised alongside other rights in the area.

For example, a **native title claimant application** made over a pastoral lease may seek rights to go onto and use the land, but cannot interfere with the pastoralist carrying out the usual business of managing stock.

## *What areas cannot be claimed?*

The Australian legal system does not recognise native title rights in some areas where things have been done that extinguish native title.



Cape Tribulation National Park, Queensland.  
Photo: Queensland Tourism Commission

*The validly granted rights of others are protected by law. Native title cannot take away, or interfere with, the rights other people may have under their valid leases, licences and permits...Continued public access to and enjoyment of national parks, waterways, and other public places is guaranteed by law.*

Chris Doepel, Registrar, National Native Title Tribunal, statement to the media, 30 July 1998.

Areas where native title is extinguished include:

- privately owned land (including family homes and privately owned freehold farms)
- land covered by residential, commercial and certain other leases
- some Crown reserves vested in bodies such as a local government or statutory authority
- areas where governments have built roads, schools and undertaken other public works.

These areas of land generally cannot be claimed in a native title application. For example, if you own freehold land, or run a business on a

commercial lease, native title is extinguished and the land cannot be claimed in a native title application.

**Recent decisions made by the High Court of Australia in the cases of *Wilson v Anderson* and *Western Australia v Ward* have further defined where native title might exist, particularly in New South Wales and in Western Australia.**

**Further information about those cases is available on the Tribunal's web site under Media Centre, Facts for journalists, and in the fact sheet *Where might native title exist in Western Australia?***

Specific native title terms are highlighted in bold type. *Native Title Facts* 'List of terms' provides definitions for commonly used native title terms.

This fact sheet relates only to native title applications filed in the Federal Court of Australia. It is provided as general information only and should not be relied upon as legal advice for a particular matter.

**For other fact sheets in this series and more information about native title and Tribunal services, contact the National Native Title Tribunal, GPO Box 9973 in your capital city or on freecall 1800 640 501.**

**A wide range of information is also available online at [www.nntt.gov.au](http://www.nntt.gov.au)**

**The National Native Title Tribunal has offices in Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth and Sydney.**