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AUSTRALIAN INSTITUTE OF ABORIGINAL  
AND TORRES STRAIT ISLANDER STUDIES

# Native Title Information Handbook

**New South Wales**

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The Native Title Research Unit (NTRU) acknowledges the generous contributions of peer reviewers and welcomes suggestions and comments about the content of the Native Title Information Handbook (the Handbook). The Handbook seeks to collate publicly available information about native title and related matters. The Handbook is intended as an introductory guide only and is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. If you are aware that this publication contains any errors or omissions please contact us. Views expressed in the Handbook are not necessarily those of AIATSIS.

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## Contents

1. Introduction .....	3
2. Native title .....	3
3. Legislation.....	5
4. NSW Government agencies: policies and procedures.....	6
5. Native title representative body .....	7
6. Native title applications .....	7
7. Native title determinations.....	8
8. Registered native title bodies corporate.....	11
9. Future acts.....	12
10. Indigenous land use agreements.....	14
11. Cultural heritage.....	16
12. Land rights .....	17
13. ILC land purchases .....	20
14. Indigenous protected areas .....	21
15. Aboriginal & Torres Strait Islander population.....	22
16. Sources.....	23

## 1. Introduction

Native title has been recognised over 2752km<sup>2</sup> or approximately 0.3 per cent of land in New South Wales. In December 2015, native title was recognised in 8 of the 9 consent determinations to date. Native title was not recognised in the 2 litigated determinations. At that time, 6 registered prescribed bodies corporate had been set up to hold on trust or manage that land on behalf of the native title holders. A further 18 claims were awaiting determination. [NTSCorp](#) is the native title service provider for NSW and the ACT.

The relatively small area of native title coverage in the State is partly due to the land rights regime enacted by the [Aboriginal Land Rights Act 1983 \(NSW\)](#) (ALRA). The regime provides a mechanism for compensating the Aboriginal people of NSW for the loss of their land by enabling Aboriginal Land Councils to lodge claims for certain Crown lands. Eligible land is claimable under the land rights regime if at the date of the claim it is not subject to native title or an application for a positive determination of native title. The Land Rights Unit at the [New South Wales Aboriginal Land Council](#) (NSWALC) assists groups in ascertaining whether land is claimable under the scheme.

The NSWALC was formally constituted as a statutory corporation under the ALRA, and is administered by the Minister for [Aboriginal Affairs](#). The NSWALC represents the 120 local Aboriginal land councils also established under the ALRA.

The [Constitutional and Native Title Practice Group](#) within the [Crown Solicitor's Office](#) provides the State Government and the Attorney-General's Department with legal advice and services on native title and Aboriginal land rights issues. [Resources and Energy](#) within the [Department of Industry](#) also provides advice and services relating to native title issues, particularly with regard to exploration, mining and petroleum. The NSW Attorney-General (assisted by the [Department of Industry](#)) has responsibility for the management of native title claims and approving agency-negotiated Indigenous land use agreements. The Government [supports the use of Indigenous land use agreements](#) as a means of dealing with native title through agreement rather than litigation.

## 2. Native title

Native title is the recognition in Australian law, under the [Native Title Act 1993 \(Cth\)](#) (NTA), that Aboriginal and Torres Strait Islander peoples had a system of law and ownership of their lands before European settlement. The historic High Court decision in [Mabo and Others v State of Queensland \(No 2\) \[1992\] HCA 23; \(1992\) 175 CLR 1](#) (*Mabo*) was the first recognition that native title continues to exist through

the common law in Australia. The native title of a particular group is defined by the traditional laws and customs observed by that group of people.

Section 223 of the NTA defines the native title rights and interests that are the subject of a determination of native title under s 225 of the Act. In s 223(1), the term 'native title or native title rights and interests' means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

- the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
- the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- the rights and interests are recognised by the common law of Australia.

The significance of the *Mabo* decision lies in the recognition that native title is a pre-existing right, inherent to Indigenous peoples by virtue of their distinct identity as first owners and occupiers of the land and their continuing systems of law. Native title is not a grant or right that is created by the Australian government nor is it dependent upon the government for its existence, although it is dependent on recognition by the common law in order to be enforceable in the Australian legal system. This distinguishes native title from other legislative land rights systems that operate in Australia whereby the government grants the title. Native title may be recognised in places where Aboriginal and Torres Strait Islander people continue to follow their traditional laws and customs and have maintained a link with their traditional country. Native title in each instance is recognised as having its source in, and deriving its content from, the laws of Aboriginal and Torres Strait Islander people. The rights and interests that are recognised as native title may vary from group to group, from one area to another, and may differ depending on what is claimed and what might be negotiated between all of the parties with an interest in the area under claim. Native title rights may include the exclusive possession, use and occupation of traditional country or non-exclusive native title rights such as the right to access and camp or the right to hunt and fish on traditional country. Native title rights do not extend over minerals or petroleum.

The *Mabo* decision recognised Aboriginal and Torres Strait Islander peoples' rights over their land, and also recognised the system of laws from which those rights are derived. As a result of the *Mabo* decision and the subsequent enactment of the NTA Aboriginal and Torres Strait Islander people can apply to the Federal Court of Australia to have their native title rights recognised under Australian law. Native title may be recognised in relation to vacant Crown land, state forests, national parks,

public reserves, pastoral leases, beaches, foreshores and waters, government or other public land and Indigenous held land (under land rights legislation).

For more information refer to the [National Native Title Information Handbook](#).

### 3. Legislation

The [Native Title Act 1993 \(Cth\)](#) (NTA) is the Australian Government's legislative response to the High Court decision in [Mabo](#), which recognised Indigenous Australians' rights and interests in land and waters according to their own traditional laws and customs under [s 223](#). The NTA provides the legal principles for the recognition of native title, the processes involved in having native title recognised and the role and responsibilities of the different bodies involved in this process.

Since it was introduced the NTA has been the subject of numerous reviews and legislative amendments. The annual native title reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner provide detailed information about these reviews, reform processes and related legislative amendments, see: [Native Title Reports](#) (1994-2012) and [Social Justice Reports](#) (2013-) on the [Australian Human Rights Commission](#) website for more information. A review of the NTA was undertaken in 2015 by the Australian Law Reform Commission, see below for an overview or read the full report [here](#). A brief overview is also provided below.

#### New South Wales native title legislation

The New South Wales (NSW) Government implemented the [Native Title \(New South Wales\) Act 1994 \(NSW\)](#) (the Act) to validate past acts (s.8 and 10-13). In 1998, this Act was amended to validate intermediate period acts attributable to the State (s.8A and 14B-14E). The 1998 amendments to the Act confirm the extinguishment of native title by [previous exclusive possession acts](#) attributable to the State, and the partial extinguishment of native title by [previous non-exclusive possession acts](#) attributable to the State (Part 4). Part 3 of the Act confirms State ownership of all natural resources, rights to use, control and regulation of the flow of water, existing fishing access rights under State law; as well as existing public access to and enjoyment of waterways, beds, banks and foreshores of waterways, coastal waters, beaches and areas that were public places as at 31 December 1993.

Under Part 7 of the Act, native title claimants can object to the compulsory acquisition of native title rights and interests, the creation or variation of certain mining rights, and renewals or other dealings with non-exclusive agricultural or pastoral leases. Such objections are adjudicated by the [Civil & Administrative Tribunal](#).

NSW has implemented exemptions from the application of the 'right to negotiate' under s 26A and s 26C of the NTA, see section 8 below and [State and Territory alternative to 'right to negotiate'](#) on the Attorney-General's Department website for more information.

### Related legislation

For information about legislation relating to Aboriginal cultural heritage and land rights see sections 10 and 11 below.

## 4. NSW Government agencies: policies and procedures

### Department of Justice and Crown Solicitor's Office

The NSW Attorney-General (assisted by the [Department of Industry](#)) has responsibility for the management of native title claims and approving agency-negotiated Indigenous land use agreements in NSW. The Government supports the use of Indigenous land use agreements as a means of dealing with native title through co-operation and agreement rather than lengthy and costly litigation (see [Premier's Memorandum M2011-18](#)). NSW does not have a publicly available credible evidence policy or credible evidence guidelines relating to native title 'connection'. As a result, credible evidence has historically been negotiated with reference to each native title application. The State has adopted the approach that it requires credible evidence to be submitted for assessment and accepted before being willing to enter into any meaningful negotiations as to possible avenues for resolution of native title applications by agreement rather than by litigation.

The [Constitutional and Native Title Practice Group](#) within the [Crown Solicitor's Office](#) provides legal advice and services on native title and Aboriginal land rights issues.

### Department of Trade and Investment, Regional Infrastructure and Services

The [Crown Lands](#) section within [Department of Industry](#) is responsible for the administration of Crown lands in NSW. In June 2012 the NSW Government commenced a review of NSW Crown land management and the resulting [Crown Lands Legislation White Paper](#) includes the following two objectives: to preserve Aboriginal (and non-Aboriginal) cultural heritage and to encourage Aboriginal use, and where appropriate co-management of Crown land. See the: [Comprehensive review of NSW Crown Land Management](#) on the NSW Trade and Investment website for more information. [Crown Lands](#) also assess Aboriginal land claims throughout New South Wales; see section 11 below and [Aboriginal land](#) on the Department of Primary Industries website.

[Resources and Energy](#) within the [Department of Industry](#) provides advice and services relating to native title issues, particularly with regard to exploration, mining and petroleum. See [native title](#) on the Department of Industry website.

See also [Aboriginal Affairs](#), the [Office of the Registrar of the NSWALRA](#), and the [Aboriginal joint management of parks](#) section of the [Office of Environment and Heritage](#) website for more information about agencies involved in Aboriginal cultural heritage and land rights matters as well as sections 10 and 11 below.

## 5. Native title representative body

### Overview

Native title services in New South Wales are provided by [NTSCORP](#) (formerly New South Wales Native Title Services Limited). NTSCORP is a native title service provider (NTSP) and also assists Aboriginal communities in the Australian Capital Territory with native title matters. See Table 1 below for NTSCORP contact details.

### Map

The National Native Title Tribunal's (NNTT) [Representative Aboriginal/Torres Strait Islander body areas map \(PDF 663KB\)](#) shows the geographic areas covered by native title representative bodies (NTRBs) and native title service providers (often both commonly called NTRBs) across Australia.

**Table 1: NTSCORP contact details**

Street address	Postal address	Phone	Email
Level 1 44-70 Rosehill Street Redfern NSW 2016	PO Box 2105 Strawberry Hills NSW 2012	(02) 9310 3188 or 1800 111 844	<a href="mailto:information@ntscorp.com.au">information@ntscorp.com.au</a>

## 6. Native title applications

### Overview

As at 31 December 2015 there had been 526 native title applications in NSW comprising: 226 claimant applications, 18 compensation applications and 282 non-claimant applications, see Table 2 below. For up to date information about native title applications and registered native title claimant applications use the [Search applications and determinations](#) or [Search Register of native title claims](#) tools on the NNTT website.

**Table 2: Native title applications in New South Wales**

Application Status	Claimant	Compensation	Non-Claimant	Total
Active	20	0	7	27
Other	208	18	277	503
<b>All</b>	<b>228</b>	<b>18</b>	<b>284</b>	<b>530</b>

Source: <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx> at 31 December 2015

## Map

The NNTT's [New South Wales, Australian Capital Territory and Jervis Bay Territory native title applications and determination areas map \(PDF 4.6MB\)](#) shows claimant applications (as per the native title determinations applications (NTDA) Schedule as lodged in the Federal Court) and native title claimant determinations (as per the national Native Title Register).

## 7. Native title determinations

### Overview

As at 31 December 2015, there had been a total of 51 native title determinations within New South Wales, comprising 11 claimant determinations, one compensation determination and 39 non-claimant determinations. Information about claimant and compensation determinations is provided below. For information about non-claimant determinations use the search tools on the [NNTT](#) and [Agreements, Treaties and Negotiated Settlements \(ATNS\)](#) websites.

### Claimant determinations

As at 31 December 2015, native title had been found to exist in all or parts of the determination areas in eight of the 11 claimant determinations in NSW. Summary Table 3 below provides links to information about these claimant determinations including: determination summaries on the [NNTT](#) website; relevant case law on the [Australasian Legal Information Institute \(Austlii\)](#) website (where available) and determination summaries on the [ATNS](#) website (where available) which also provide links to information about the native title claimants/holders and agreements involving them.

### Native title claimant determinations map

See map in section 5 above.

**Table 3: Native title claimant determinations in New South Wales**

Short name (NNTT hyperlink)	Case name (Austlii hyperlink)	Date	Outcome	Legal process (ATNS hyperlink)
<a href="#">Yaegl People #1</a>	<a href="#">Yaegl People #1 v Attorney-General of New South Wales</a>	25/06/2015	Native title exists in parts of the determination area	Consent
<a href="#">Yaegl People #2</a>	<a href="#">Yaegl People #2 v Attorney-General of New South Wales</a>	25/06/2015	Native title exists in parts of the determination area	Consent
<a href="#">Barkandji Traditional Owners #8 (Part A)</a>	<a href="#">Barkandji Traditional Owners #8 v Attorney-General of New South Wales</a>	16/06/2015	Native title exists in the entire determination area	Consent
<a href="#">Gumbaynggirr People</a>	<a href="#">Phyball on behalf of the Gumbaynggirr People v Attorney-General of New South Wales [2014] FCA 851 (15 August 2014)</a>	15/08/2014	Native title exists in the entire determination area	Consent
<a href="#">Bandjalang People #1</a>	<a href="#">Bandjalang People No 1 and No 2 v Attorney General of New South Wales (includes Corrigenda dated 29 January 2014 and 17 February 2014) [2013] FCA 1278 (2 December 2013)</a>	02/12/2013	Native title exists in parts of the determination area	Consent
<a href="#">Bandjalang People #2</a>	<a href="#">Bandjalang People No 1 and No 2 v Attorney General of New South Wales (includes Corrigenda dated 29 January 2014 and 17 February 2014) [2013] FCA 1278</a>	02/12/2013	Native title exists in parts of the determination area	Consent
<a href="#">The Githabul People</a>	<a href="#">Trevor Close on behalf of the Githabul People v Minister for Lands [2007] FCA 1847</a>	29/11/2007	Native title exists in the entire determination area	Consent
<a href="#">Darug People</a>	<a href="#">Gale on behalf of the Darug People v Minister for Lands (Unreported, FCA, 7 September 2004, Madgwick J)</a>	07/09/2004	Native title does not exist	Litigated
<a href="#">Byron Bay (Byron Bay Bundjalung People)</a>	<a href="#">Kelly on behalf of the Byron Bay Bundjalung People v NSW Aboriginal Land Council [2001] FCA 1479</a>	23/10/2001	Native title does not exist	Consent <sup>1</sup>
<a href="#">Yorta Yorta</a>	<a href="#">Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 (High Court) Members of the Yorta Yorta Aboriginal Community v State of Victoria (Including Corrigendum dated 21 March 2001) [2001] FCA 45</a>	18/12/1998	Native title does not exist	Litigated <sup>2</sup>

Short name (NNTT hyperlink)	Case name (Austlii hyperlink)	Date	Outcome	Legal process (ATNS hyperlink)
	<a href="#">The Members of the Yorta Yorta Aboriginal Community v The State of Victoria [1998] 1606 FCA</a>			
<a href="#">Dunghutti People</a>	<a href="#">Mary Lou Buck on behalf of the Dunghutti People v New South Wales and Ors (Consent Determination) [1997] FCA 1624</a>	07/04/1997	Native title exists in the entire determination area	Consent

<sup>1</sup>This matter was settled by ILUA, but is listed as a consent determination by the NNTT. See Section 7 below for ILUA information.

<sup>2</sup>The *Yorta Yorta* determination relates to areas of land in both New South Wales and Victoria.

Sources: <http://www.atns.net.au/default.asp>, <http://www.austlii.edu.au/> & <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx> as at 31 December 2015

## Compensation determination

As at 31 December 2015, there had been one compensation determination in NSW. Summary Table 4 below provides links to information about this determination including the native title claimant group on the [ATNS](#) website; the determination summary on the [NNTT](#) website; relevant case law on the [Australasian Legal Information Institute \(Austlii\)](#) website; and determination information on the [ATNS](#) website.

**Table 4: Native title compensation determination in New South Wales**

Short name (NNTT hyperlink)	Case name (Austlii hyperlink)	Date	Outcome	Legal process (ATNS hyperlink)
<a href="#">Barkandji (Paakantyi) People #11</a>	<a href="#">Lawson v Minister for Land &amp; Water Conservation for New South Wales [2004] FCA 165</a>	16/02/2004	Native title does not exist	Litigated

Sources: <http://www.atns.net.au/default.asp>, <http://www.austlii.edu.au/> & <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx> at 31 December 2015

For up to date information about native title determinations use the [Search applications and determinations](#) or the [Search national native title register](#) tools on the NNTT website. The [Native Title Research Unit](#) (NTRU) also provides information about native title determinations in its monthly '[What's New](#)' service.

## More information

The Productivity Commission's [Overcoming Indigenous Disadvantage: Key Indicators 2014](#) report (using data provided by the NNTT) includes information about the proportion of land where native title has been found to exist wholly or partially; or

has been extinguished (as at 30 June for 2004-2013), see [Chapter 9 \(PDF 5.5MB\)](#) (section 9.2 and Table 9A.2.3).

## 8. Registered native title bodies corporate

### Overview

Under ss 55-57 of the [Native Title Act 1993 \(Cth\)](#), native title groups are required to nominate a Prescribed Body Corporate (PBC) to hold (as trustee) or manage (as agent) their native title following a determination that native title exists. A nominated PBC is entered onto the National Native Title Register and at this point the corporation becomes known as a Registered Native Title Body Corporate (RNTBC). RNTBCs and PBCs are often commonly both referred to as PBCs.

As at 21 December 2015, there were 6 RNTBCs in New South Wales. Table 5 below provides links to information about these RNTBCs on the [Native Title Corporations \(NTC\)](#) website, the [Agreements, Treaties and Negotiated Settlements \(ATNS\)](#) website (where available) and native title determination information on the [National Native Title Tribunal \(NNTT\)](#) website.

**Table 2: Registered native title bodies corporate in New South Wales (in alphabetical order)**

RNTBC Name (NTC hyperlink)	Type of RNTBC (ATNS hyperlink)	Determination Date	Determination short name (NNTT hyperlink)
<a href="#">Bandjalang Aboriginal Corporation Prescribed Body Corporate RNTBC</a>	Trustee	02/12/2013	<a href="#">Bandjalang People #1</a> <a href="#">Bandjalang People #2</a>
<a href="#">Barkandji Native Title Group Aboriginal Corporation RNTBC</a>	Trustee	16/06/2015	<a href="#">Barkandji Traditional Owners #8</a>
<a href="#">Dunghutti Elders Council (Aboriginal Corporation) RNTBC</a>	<a href="#">Trustee</a>	07/04/1997	<a href="#">Dunghutti People</a>
<a href="#">Githabul Nation Aboriginal Corporation RNTBC</a>	<a href="#">Agent</a>	29/11/2007	<a href="#">The Githabul People</a>
<a href="#">Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC</a>	Trustee	15/08/2014	<a href="#">Gumbaynggirr People</a>
<a href="#">Yaegl Traditional Owners Aboriginal Corporation RNTBC</a>	Trustee	25/06/2015	<a href="#">Yaegl People #1</a> <a href="#">Yaegl People #2</a>

Sources: <http://www.nativetitle.org.au/> <http://www.atns.net.au/> & <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx> at 31 December 2015

For up to date information about native title claimant determinations and PBCs/RNTBCs use the [NNTT Search applications and determinations](#) tool on the NNTT website. The [NTRU](#) also provides information about PBC/RNTBCs in its monthly '[What's New](#)' service; its [Registered Native Title Bodies Corporate Summary](#) compiled from data provided by the NNTT; and on the [Native Title Corporations](#) website (see below).

### National determinations and PBC map

The NNTT [Determinations and Native Title Prescribed Bodies Corporate Map \(PDF 1.1MB\)](#) shows determined areas covered by PBCs and also shows where PBCs are still to be nominated over determined areas. This document includes a table of the areas in each state/territory (in square kilometres) covered by native title determinations.

### Compliance regime for RNTBCs

The NTA and the [Native Title \(Prescribed Bodies Corporate\) Regulations 1999 \(Cth\)](#) (PBC Regulations) require corporations to register under the [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006 \(Cth\)](#) (CATSI Act) if they are determined by the Federal Court to hold and manage native title rights and interests. The [Office of the Registrar of Indigenous Corporations](#) (ORIC) supports and regulates corporations incorporated under the CATSI Act. ORIC provides advice on how to incorporate, training for corporation members and office holders and corporate governance. For information about RNTBCs use the corporations search tool on the [ORIC](#) website.

### Native title corporations website

The AIATSIS NTRU manages the [Native Title Corporations](#) website, a resource for RNTBCs and for those engaging with them. It provides information about legislation and policies, events, resources and publications, training and running a RNTBC. Information about individual RNTBCs is provided in detailed [PBC profiles](#) (including links to PBC websites where available). The NTRU has also compiled [Funding and Training Guides for RNTBCs and PBCs](#). See the [New South Wales Funding and Training Guide for RNTBCs and PBCs \(PDF 871.22KB\)](#).

## 9. Future acts

### Overview

A [future act](#) is a proposed activity on land or waters that may affect native title rights and interests. [Section 227](#) of the NTA sets out that: an act affects native title if it extinguishes the native title rights and interests or if it is otherwise wholly or partly

inconsistent with their continued existence, enjoyment or exercise. Examples of future acts include the grant of a mining tenement, building public infrastructure, services or facilities and the compulsory acquisition of land. A future act is invalid to the extent it affects native title unless it complies with certain provisions in the NTA (see Subdivisions D-M of Division 3 of the [NTA](#)). These provisions include that a future act will be valid if parties to an Indigenous Land Use Agreement (ILUA) consent to it being done and details of the agreement are on the NNTT's [Register of ILUAs](#).

The future act process provides registered native title applicants and native title holders with specified rights, known as [procedural rights](#) from the time a claim is registered. The type of procedural rights which the native title group can exercise will vary (from the right to comment, be consulted, object or negotiate) depending on the type of future act that is being proposed. Generally the [right to negotiate](#) applies to future acts such as mining, exploration, prospecting, gas and petroleum exploration or extraction.

The [NNTT](#) administers the future act processes that attract the right to negotiate and provides information and support on future act related questions. The NNTT's role includes mediating between parties, conducting inquiries and making future act determinations when parties cannot reach agreement. Where a proposed future act meets the criteria set out in [s 237](#) of the NTA, it may attract an [expedited procedure](#). This means that the act may be validly done without negotiations if there are no objections to the act. For more information see the [future acts section](#) of the NNTT website.

States and territories may also legislate to establish their own right to negotiate regimes, known as 'alternative procedures' or an [alternative to 'right to negotiate'](#). Such regimes must mirror the NTA regime and gain Commonwealth ministerial approval. NSW has implemented exemptions from the application of the 'right to negotiate' with reference to:

[s 26A](#) of the NTA: replacement of the right to negotiate provisions for an approved exploration etc. act with a right to be consulted about ways of minimising the impact of the grant (mining and petroleum); and

[s 26C](#) of the NTA: exemption from the right to negotiate for certain opal or gem mining on land that has previously been mined.

See [State and Territory alternative to 'right to negotiate'](#) on the Attorney-General's Department website for more information.

## Future act applications

As at 31 December 2015 there had been a total of 13 future act applications in New South Wales: see Table 6 below. Use the NNTT [Future act applications and determinations](#) search tool to find information about particular applications.

**Table 6: Summary of future act applications in New South Wales**

Application Type	No.
Future act determination application	7
Future act expedited procedure objection applications	6
<b>Total future act applications</b>	<b>13</b>

Source: <http://www.nntt.gov.au/searchRegApps/FutureActs/Pages/default.aspx> at 31 December 2015

## Future act determinations

As at 31 December 2015 there had been a total of 11 future act determinations in New South Wales. Use the NNTT [Future act applications and determinations](#) search tool to find information about particular determinations.

## Future act agreements

A future act agreement is an agreement made under [s 31](#) of the NTA with native title parties about an activity that may affect native title. Such agreements are often called section 31 agreements. Once an agreement has been made the parties are required to lodge a copy of the agreement with the NNTT, however in most cases the parties provide only basic agreement information (to satisfy the NTA requirements). In some cases parties may make agreement information public and information about (some of) these public future act agreements are available on the ATNS website, see [Future act agreements \(Native Title Act\)](#).

# 10. Indigenous land use agreements

## Overview

As at 31 December 2015, there were ten registered Indigenous Land Use Agreements (ILUAs) in New South Wales, all of which are Area Agreements. Table 7 below provide links to ILUA information on the [ATNS](#) website and ILUA information (providing access to NNTT register extracts and maps) on the [National Native Title Tribunal \(NNTT\)](#) website (as at 31 January 2015).

**Table 7: Registered Indigenous land use agreements in New South Wales**

Name (ATNS hyperlink)	File no. (NNTT hyperlink)	Date	Type	Subject
<a href="#">Gundungurra Area Agreement</a>	<a href="#">NI2014/001</a>	27/02/2015	AA	Native Title Settlement, Consultation protocol
<a href="#">Cubbitch Barta Clan of the Dharawal People ILUA</a>	<a href="#">NI2010/001</a>	16/03/2011	AA	Access
<a href="#">Bundjalung People of Byron Bay (ILUA 2)</a>	<a href="#">NI2006/004</a>	22/04/2008	AA	Co-management Consultation Protocol Extinguishment
<a href="#">Ti Tree Lake (Taylor's Lake) (ILUA 3)</a>	<a href="#">NI2006/005</a>	22/04/2008	AA	Co-management Consultation Protocol
<a href="#">Gundungurra Taralga Wind Farm Agreement</a>	<a href="#">NI2006/002</a>	13/12/2007	AA	Development
<a href="#">Githabul People ILUA</a>	<a href="#">NI2006/001</a>	15/08/2007	AA	Access
<a href="#">Twofold Bay</a>	<a href="#">NI2001/003</a>	29/04/2002	AA	Infrastructure
<a href="#">Powercoal Pty Ltd, Victor Perry, Stephen Seiver &amp; NSW ALC ILUA Area Agreement</a>	<a href="#">NIA2000/001</a>	29/08/2001	AA	Mining
<a href="#">Bunjalong of Byron Bay (Arakwal)</a>	<a href="#">NIA2001/001</a>	28/08/2001	AA	Development
<a href="#">Tumut Brungle</a>	<a href="#">NIA1998/001</a>	21/06/1999	AA	Mining

Sources: <http://www.atns.net.au/> & <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx> at 11 January 2016

For up to date ILUA information use the [Register of Indigenous land use agreements](#) search tool on the NNTT website. The [NTRU](#) also provides information about ILUAs in its monthly '[What's New](#)' service.

### ILUA map

The NNTT [Indigenous Land Use Agreements Map \(PDF 2.02MB\)](#) shows the external boundaries of registered ILUAs (area agreements and body corporate agreements) as well as ILUAs in notification but not yet registered. It also includes a summary table of the area and proportion of land covered by ILUAs in each jurisdiction.

### More information

For more information about ILUAs see the ILUA section of the [National Native Title Information Handbook](#) and the [ILUA section](#) of the NNTT website. The Productivity

Commission's [Overcoming Indigenous Disadvantage: Key Indicators 2014](#) report (using data provided by the NNTT) includes information about the total area of registered ILUAs (as at 30 June for 2004-2013). See [Chapter 9 \(PDF 5.5MB\)](#) (section 9.2 and Table 9A.2.5).

## 11. Cultural heritage

### Overview

Throughout 2011-2014, the NSW Government conducted a legislative review and reform process to introduce new Aboriginal cultural heritage legislation. In September 2013 the Government responded to the recommendations of the [Aboriginal Cultural Heritage Reform Working Party](#) releasing a [proposed model](#) for stand-alone Aboriginal cultural heritage legislation and commencing a consultation process to get feedback on the proposed model. In January 2016, the reform process was still in progress. See the [Aboriginal heritage law reform](#) section of the [Office of Environment and Heritage](#) website for more information and updates on the reform process. See also the [Culture and heritage](#) section of the [NSW Aboriginal Land Council](#) website for information about Aboriginal cultural heritage and the current reform process in NSW.

The [National Parks and Wildlife Act 1974 \(NSW\)](#) is the primary legislation relating to Aboriginal cultural heritage in NSW. Under the [Aboriginal Land Rights Act 1983 \(NSW\)](#) Local Aboriginal Land Councils also play a role in the protection and promotion of awareness of Aboriginal culture and heritage. The [Heritage Act 1977 \(NSW\)](#) also allows for Aboriginal places to be nominated to the New South Wales Heritage Register.

### Legislation

#### ***National Parks and Wildlife Act 1974 (NSW)***

The [National Parks and Wildlife Act 1974 \(NSW\)](#) (NPWA) includes provisions for the protection and preservation of Aboriginal objects and places of cultural and historic significance. The NPWA is administered by the [Office of Environment & Heritage](#) (OEH). The NPWA gives the Director-General of OEH responsibility for the proper care, preservation and protection of 'Aboriginal objects' and 'Aboriginal places'. The Director-General can give permission to developers, government agencies and others to disturb, damage or destroy Aboriginal heritage through the issuing of an Aboriginal Heritage Impact Permit (or AHIP). It is an offence to harm an Aboriginal object or place without an AHIP. The Director-General also has the power to prosecute people who unlawfully destroy or damage Aboriginal objects or places, and can take other action to protect cultural heritage such as issuing a stop work order. Increased penalties for Aboriginal cultural heritage offences were introduced

through amendments to the NPWA in 2010 (see also the [National Parks and Wildlife \(Aboriginal Sites and Aboriginal Places\) Regulations 2010 \(NSW\)](#)). The NPWA requires that information about Aboriginal cultural heritage be maintained in the Aboriginal Heritage Information Management System (AHIMS) and allows for the reservation and management of Aboriginal Areas. See [Aboriginal heritage legislation in NSW: How the Aboriginal heritage system works \(PDF, 701KB\)](#). The NPWA also includes provision for the co-management of some national parks through Boards of Management. See the [Culture and heritage](#) section of the [NSW Aboriginal Land Council](#) website and the [Aboriginal heritage law reform](#) section of the [Office of Environment & Heritage](#) website for more information.

### **Heritage Act 1977 (NSW)**

The [Heritage Act 1977 \(NSW\)](#) protects the state's most outstanding natural and cultural heritage, including Aboriginal heritage, through the establishment of a [State Heritage Register](#). Consultation is undertaken with Aboriginal groups for places listed on the Register specifically for Aboriginal significance. See the [State heritage](#) section of the [Office of Environment & Heritage](#) website for more information.

### More information

The [NTRU](#) has compiled a [Native title and Indigenous cultural heritage bibliography \(PDF 772kB\)](#), as part of its [Native title and cultural heritage research project](#). See the NTRU website for more information about Indigenous heritage protection in Australia including links to relevant publications.

## 12. Land rights

### Overview

The [Aboriginal Land Rights Act 1983 \(NSW\)](#) (ALRA) established a land rights regime in NSW. The preamble of the Act provides recognition to the prior ownership and occupation of land by Aboriginal people and recognises the spiritual, social, cultural and economic importance of the land to Aboriginal people. The ALRA provides a mechanism for compensating Aboriginal people of NSW for the loss of their land by providing for Aboriginal Land Councils to lodge claims for certain Crown lands. The [New South Wales Aboriginal Land Council](#) (NSWALC) was formally constituted as a statutory corporation under the ALRA (the non-statutory NSW Aboriginal Land Council was established in 1977). The ALRA is administered by the Minister for [Aboriginal Affairs](#) and establishes the [Office of the Registrar of the NSWALRA](#). The [Aboriginal Land Rights Amendment Act 2014 \(NSW\)](#) was passed in November 2014 and commenced on 1 July 2015, with the exception of parts of Schedule 1, which are not yet in force. For more information see below and the

websites of the [NSWALC](#), [Aboriginal Affairs](#) and the [Office of the Registrar of the NSWALRA](#) and [NSW Legislation](#).

## Legislation

### ***Aboriginal Land Rights Act 1983 (NSW)***

The [Aboriginal Land Rights Act 1983 \(NSW\)](#) (ALRA) gives recognition to the prior ownership and occupation of land by Aboriginal people and recognises the spiritual, social, cultural and economic importance of the land to Aboriginal people. It establishes Aboriginal Land Councils to acquire and manage lands as an economic base for Aboriginal communities, and provides a mechanism for Aboriginal Land Councils to claim certain Crown Lands, among other functions. [Section 36](#) of the ALRA outlines the criteria for claimable Crown land: areas of land that may be granted under the ALRA include Crown land that is not lawfully used or occupied, not needed or likely to be needed for residential purposes or an essential public purposes and is not the subject of a registered native title claim or determination can be granted. Land that is privately owned cannot be claimed.

The administration of the ALRA involves the Minister for Aboriginal Affairs, [Aboriginal Affairs](#), the [NSWALC](#), the [Office of the Registrar of the ALRA](#) and the Minister/s responsible for Crown lands. Aboriginal Land Claims are lodged with the Registrar of the ALRA and are determined by the Minister/s administering the Crown Lands Act. If the land is claimable Crown land, it must be granted to an Aboriginal Land Council, generally as freehold title. Traditional connection to land does not need to be established for land to be granted to Aboriginal Land Councils under the ALRA.

NSWALC is the peak body representing Aboriginal peoples at the State level and is governed by a Council elected every 4 years. At the local level, there are 120 Local Aboriginal Land Councils, which are governed by elected Boards. The NSWALC and the land council network have been self-funded since 1998. As at 30 June 2015, 39,147 land claims had been lodged and 28,019 land claims are awaiting a determination from the Crown Lands Ministers (see NSWALC [annual reports](#) for more information). The NSWALC has also published a [fact sheet](#) and a [guide](#) describing the interaction between native title and land rights. For more information about the operation of the ALRA see the websites of the above mentioned organisations.

### **Review of the ALRA**

Under [section 252A](#) of the ALRA a review of the NSWALRA must be undertaken every 5 years to consider if the policy objectives of the Act are still valid and if the terms of the Act are still suitable for achieving those objectives. Information about the 2011 review is available on [Legislative review](#) section of the [Aboriginal Affairs](#) website. The review resulted in the [Aboriginal Land Rights Amendment Act 2014](#)

[\(NSW\)](#) (the Amendment Act). The Amendment Act includes new provisions relating to Aboriginal land claims, governance, reporting, management of Aboriginal land council housing and the regulatory framework (business enterprises and investments) for Aboriginal Land Councils. See the Amendment Act [explanatory note](#) and NSWALC [fact sheet](#).

## Related legislation

### ***National Parks and Wildlife Act 1974 (NSW)***

Part 4A of the [National Parks and Wildlife Act 1974 \(NSW\)](#) (NPWA) includes provisions that enable joint management of national parks in NSW. This involves a transfer of the title to the land to an Aboriginal Land Council and the lease back of the land to the Minister for the Environment, who pays an annual rent for the lease of the lands. See the [Aboriginal joint management of parks](#) section of the [Office of Environment & Heritage](#) website for more information.

## Indigenous owned or controlled land in New South Wales

Information about Indigenous owned or controlled land is compiled by the Productivity Commission as part of its [Overcoming Indigenous Disadvantage](#) reports. The most recent report, [Overcoming Indigenous Disadvantage: Key Indicators 2014](#), was released on 19 November 2014. Chapter 9 (section 9.2 and Table 9A.2.1) of this report provides information about Indigenous owned or controlled land (which includes Indigenous owned or controlled land that is freehold, leasehold, crown, license, Aboriginal Deed of Grant in Trust or not stated tenure). Table 9 below provides a summary of Indigenous owned or controlled land in NSW.

**Table 8: Estimated Indigenous owned or controlled land in NSW (ILC data at 30 April 2014) <sup>(a)</sup>**

Land tenure type	Unit	Total
Freehold (alienable)	km <sup>2</sup>	3519.3
Leasehold (Crown Lease)	km <sup>2</sup>	244.5
Leasehold (other than Crown Lease)	km <sup>2</sup>	44.5
License	km <sup>2</sup>	63.6
Tenure not stated	km <sup>2</sup>	242.4
Total Indigenous land	km <sup>2</sup>	<b>4,114.3</b>
Proportion of national total of Indigenous land	%	0.3
Total land area of NSW (b)	km <sup>2</sup>	800,642
Indigenous land as a proportion of total land area of NSW	%	0.5
Number of land parcels (c)	no.	<b>5,950</b>

<sup>(a)</sup> The ILC makes no warranties as to the currency or accuracy of this information. Non-ILC land information data date - 2000.

- (b) Total land area figures based on GeoScience Australia's published "Area of Australia - States and Territories" data as calculated from GeoScience Australia's GEODATA Coast 100K 2004 product.
- (c) Parcels are individual geographic features rather than legal entities. That is, a legal parcel may be dissected into two or more parcels by, for example, a road, and are represented in these data as two parcels while being only a single legal land entity.
- Nil or rounded to zero.

Source: <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/key-indicators-2014/09-key-indicators-2014-chapter9.pdf> Table 9A.2.1 Estimated Indigenous owned or controlled land by State/Territory, 2014 Indigenous Land Corporation 2014 (unpublished). See Chapter 9 and related attachment tables.

## 13. ILC land purchases

### Overview

The [Indigenous Land Corporation](#) (ILC) was established in 1995. It is a [Corporate Commonwealth Entity](#) under the [Public Governance, Performance and Accountability Act 2013](#) (Cth) and a portfolio agency of the [Department of Prime Minister and Cabinet](#). Since 2005 the ILC has been administered under the [Aboriginal and Torres Strait Islander Act 2005 \(Cth\)](#) (see part 4A of the Act).

The ILC is accountable to Parliament through the [Minister for Indigenous Affairs](#), and it is this Minister who appoints the [ILC Board](#). The ILC Board is responsible for all policy and land purchase decisions and is not under the direction of the Minister. The ILC's purpose is to assist Indigenous people to acquire and manage land to achieve economic, environmental, social and cultural benefits. The ILC acquires and grants properties to Indigenous organisations and assists Indigenous landholders to sustainably manage land and develop viable and sustainable land uses including: developing property management plans, purchasing equipment, or developing infrastructure. The ILC has recently made changes to its program delivery structure, combining its land acquisition and management functions into a single program: [Our Land Our Future](#). See the [Corporate documents](#) section of the ILC website for copies of the ILC's national, state and territory land strategies.

### ILC land purchases

As at 30 June 2015, the ILC had purchased 58 properties in NSW covering a total area of 250,641.18 hectares. The titles to 37 of these properties had been transferred to Aboriginal organisations. A list of land purchases (including the title holding body) is available on the ILC website: [ILC Lands Purchased](#).

### Map

See the [Land purchased](#) section of the ILC website to view a map of land purchases.

## 14. Indigenous protected areas

### Overview

An Indigenous Protected Area (IPA) is an area of Indigenous-owned land or water where Indigenous landowners have entered into a voluntary agreement with the Australian Government for the purposes of promoting biodiversity and cultural resource conservation. The declaration of an IPA over Indigenous owned lands results in that land being considered as part of the [National Reserve System](#). The IPA program is administered by the [Indigenous Affairs Group](#) within the Department of the Prime Minister and Cabinet.

### Indigenous protected areas in New South Wales

As at November 2015, there were ten [declared IPAs in NSW](#). Table 9 below provides links to IPA information (where available) on the [Department of Environment](#) website.

**Table 3: Indigenous protected areas in NSW**

IPA name (DoE hyperlink, where available)	Year Declared
<a href="#">Boorabee and The Willows</a>	2010
<a href="#">Brewarrina Ngemba Billabong</a>	2010
Dorodong	2011
<a href="#">Gumma</a>	2011
<a href="#">Minyumai</a>	2011
<a href="#">Ngunya Jargoan</a>	2013
<a href="#">Tarriva Kurrukun</a>	2009
<a href="#">Toogimbie</a>	2007
<a href="#">Wattleridge</a>	2007
<a href="#">Weilmoringle</a>	2011

Source: <http://www.environment.gov.au/indigenous/ipa/declared/index.html> and <https://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/indigenous-environment-branch/project-locations> as at November 2015

### Map of Indigenous protected areas

The [Indigenous Protected Areas Map](#) shows declared IPAs and IPA consultation projects throughout Australia.

## 15. Aboriginal & Torres Strait Islander population

### Overview

The [Australian Bureau of Statistics](#) (ABS) conducts a census of the Australian population every five years. The [Census of Population and Housing](#) collects information about the number and characteristics of people who are in Australia on census night and the dwellings in which they live. The most recent Census was conducted on 9 August 2011. See Table 11 below and the ABS catalogue number 2075.0: [Census of Population and Housing - Counts of Aboriginal and Torres Strait Islander Australians, 2011](#) for more information.

**Table 10: Aboriginal & Torres Strait Islander population (Census 2006 and 2011)**

	NSW 2006		NSW 2011		Australia 2011	
	No.	%	No.	%	No.	%
Aboriginal & Torres Strait Islander population	138,507	2.1	172,624	2.5	548,369	2.5
Total population	6,549,175		6,917,658		21,507,719	

Source: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2075.0> Table 3b: 2011 Census Counts Indigenous Status 2001-2011 (by state and territory) at 19 July 2012

The ABS estimates that the 2011 Census did not count around 17 per cent of Aboriginal and Torres Strait Islander Australians (see ABS Catalogue no. 2940.0: [Census of Population and Housing - Details of Undercount, 2011](#) on the ABS website for details). To address this problem of undercounting the ABS adjusts the Census count to derive the estimated resident Indigenous population (see ABS Catalogue no. 3238.0.55.001: [Estimates of Aboriginal and Torres Strait Islander Australians, June 2011](#) on the ABS website). The estimated resident Aboriginal and Torres Strait Islander population in NSW at 30 June 2011 was 208,476.

### Further information

The ABS has a number of publications providing further information about Australia's Aboriginal and Torres Strait Islander population including ABS Catalogue no. 4713.0: [Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006](#). The Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University has also published a number of research papers relating to Census data and the Aboriginal and Torres Strait Islander population, see [Census papers](#) on the [CAEPR](#) website.

## 16. Sources

### 1. Native title legislation

AIATSIS - Native Title Research Unit: <http://aiatsis.gov.au/research/research-themes/native-title>

Attorney-General's

Department: <http://www.ag.gov.au/LegalSystem/NativeTitle/Pages/StateAndTerritoryAlternativeToRightToNegotiate.aspx>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

NSW Civil & Administrative

Tribunal: [http://www.lawlink.nsw.gov.au/lawlink/adt/ll\\_adt.nsf/pages/adt\\_index](http://www.lawlink.nsw.gov.au/lawlink/adt/ll_adt.nsf/pages/adt_index)

### 2. NSW Government agencies & programs: native title

AIATSIS - Native Title Research Unit: <http://aiatsis.gov.au/research/research-themes/native-title>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

NSW Crown Solicitor's Office: [http://www.cso.nsw.gov.au/cso/cso\\_index.html](http://www.cso.nsw.gov.au/cso/cso_index.html)

NSW Department of Justice: <http://www.justice.nsw.gov.au/>

NSW Department of Trade & Investment, Regional Infrastructure & Services (NSW Trade & Investment): <http://www.trade.nsw.gov.au/>

NSW Office of Communities – Aboriginal

Affairs: <http://www.aboriginalaffairs.nsw.gov.au/>

NSW Office of Environment &

Heritage: <http://www.environment.nsw.gov.au/index.htm>

Office of the Registrar of the

NSWALRA: <http://www.oralra.nsw.gov.au/index.html>

### 3. Native title representative body

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

### 4. Native title applications

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

### 5. Native title determinations

Agreements, Treaties and Negotiated Settlements

(ATNS): <http://www.atns.net.au/>

AIATSIS - Native Title Research Unit: <http://aiatsis.gov.au/research/research-themes/native-title>

Australian Productivity Commission: <http://www.pc.gov.au/>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

## 6. Registered native title body corporate

Agreements, Treaties and Negotiated Settlements

(ATNS): <http://www.atns.net.au/>

AIATSIS - Native Title Corporations: <http://www.nativetitle.org.au/>

AIATSIS - Native Title Research Unit: <http://aiatsis.gov.au/research/research-themes/native-title>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

Office of the Registrar of Indigenous Corporations

(ORIC): <http://www.oric.gov.au/>

## 7. Future acts

Agreements, Treaties and Negotiated Settlements

(ATNS): <http://www.atns.net.au/>

Attorney-General's

Department: <http://www.ag.gov.au/LegalSystem/NativeTitle/Pages/StateAndTerritoryAlternativeToRightToNegotiate.aspx>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

## 8. Indigenous land use agreements

Agreements, Treaties and Negotiated Settlements

(ATNS): <http://www.atns.net.au/>

AIATSIS - Native Title Research Unit: <http://aiatsis.gov.au/research/research-themes/native-title>

Australian Productivity Commission: <http://www.pc.gov.au/>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

National Native Title Tribunal (NNTT): <http://www.nntt.gov.au/>

## 9. Cultural heritage

AIATSIS - Native Title Research Unit: <http://aiatsis.gov.au/research/research-themes/native-title>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

NSW Aboriginal Land Council: <http://www.alc.org.au/home.aspx>

NSW Office of Environment &

Heritage: <http://www.environment.nsw.gov.au/index.htm>

## 10. Land rights

Agreements, Treaties and Negotiated Settlements  
(ATNS): <http://www.atns.net.au/>

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

Australian Productivity Commission: <http://www.austlii.edu.au/>

NSW Aboriginal Land Council: <http://www.alc.org.au/home.aspx>

NSW Office of Communities – Aboriginal

Affairs: <http://www.aboriginalaffairs.nsw.gov.au/>

NSW Office of Environment &

Heritage: <http://www.environment.nsw.gov.au/index.htm>

Office of the Registrar of the

NSWALRA: <http://www.oralra.nsw.gov.au/index.html>

NSW Parliament: <https://www.parliament.nsw.gov.au/>

## 11. ILC land acquisitions

Australasian Legal Information Institute: <http://www.austlii.edu.au/>

Indigenous Land Corporation (ILC): <http://www.ilc.gov.au/>

## 12. Indigenous Protected Areas

Department of Environment: <http://www.environment.gov.au/index.html>

Department of the Environment - Indigenous Protected Areas

Program: <http://www.environment.gov.au/indigenous/ipa/index.html>

## 13. Aboriginal and Torres Strait Islander population

Australian Bureau of Statistics: <http://www.abs.gov.au>

Centre for Aboriginal Economic Policy Research: <http://caep.r.anu.edu.au/>