



GOLDFIELDS LAND AND SEA COUNCIL

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What is native title?

Native title describes a group of rights and interests of Aboriginal people in land or water; deriving from their laws and customs in relation to land, which have continued from Britain's acquisition of sovereignty over Australia that has not been extinguished. Native title depends upon the law and custom of each particular group of Aboriginal people and can be very different to other parts of Australia.

Section 223 of the *Native Title Act 1993* (Cth) sets out what native title common law rights and interests is:

- (1) *The expression **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:*
 - (a) *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*
 - (b) *the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and*
 - (c) *the rights and interests are recognised by the common law of Australia.*

Hunting, gathering and fishing covered

- (2) *Without limiting subsection (1), **rights and interests** in that subsection includes hunting, gathering, or fishing, rights and interests.*

Statutory rights and interests

- (3) *Subject to subsections (3A) and (4), if native title rights and interests as defined by subsection (1) are, or have been at any time in the past, compulsorily converted into, or replaced by, statutory rights and interests in relation to the same land or waters that are held by or on behalf of Aboriginal peoples or Torres Strait Islanders, those statutory rights and interests are also covered by the expression **native title** or **native title rights and interests**.*

Note: Subsection (3) cannot have any operation resulting from a future act that purports to convert or replace native title rights and interests unless the act is a valid future act.

Subsection (3) does not apply to statutory access rights

- (3A) *Subsection (3) does not apply to rights and interests conferred by Subdivision Q of Division 3 of Part 2 of this Act (which deals with statutory access rights for native title claimants).*

Case not covered by subsection (3)

- (4) *To avoid any doubt, subsection (3) does not apply to rights and interests created by a reservation or condition (and which are not native title rights and interests):*
 - (a) *in a pastoral lease granted before 1 January 1994; or*
 - (b) *in legislation made before 1 July 1993, where the reservation or condition applies because of the grant of a pastoral lease before 1 January 1994.*