

## Native title managers for the purposes of the *Crown Land Management Act 2016*

A comprehensive review of Crown land management recommended that council and category 1 Crown land managers be enabled to manage Crown land with less oversight from the Minister for Lands and Forestry (the Minister) and the NSW Department of Industry—Lands & Water (the department).

The *Crown Land Management Act 2016* (CLM Act) delivers on this recommendation by authorising council and category 1 Crown land managers to manage certain land that is dedicated or reserved as Crown land under a streamlined model that reduces red-tape and departmental oversight.

The review also recognised that the Commonwealth native title legislation needed to be considered in implementing the review recommendations.

The CLM Act includes specific provisions to facilitate compliance with the *Native Title Act 1993* (Cth) (NT Act). Native title refers to the rights and interests in relation to land and waters held continuously by Aboriginal people under their traditional laws and customs, recognised by Australian law.

It is important that Crown land managers understand their responsibilities and obligations under native title legislation when exercising Crown land management functions.

Compliance with native title legislation also means that registered native title claimants and native title holders are afforded their procedural rights under native title legislation.

### **Who is responsible for native title?**

All managers of Crown reserves—including councils—are responsible for complying with the NT Act.

### **What are the new requirements?**

The CLM Act provides for councils and category 1 Crown land managers to deal with Crown land without the oversight of the Minister or the department. This makes it essential that these groups clearly understand and comply with their native title obligations.

The CLM Act contains provisions to facilitate compliance by council and category 1 Crown land managers with the NT Act. Part 8 of the CLM Act provides that council and category 1 Crown land managers must engage a qualified native title manager to oversee and approve dealings that may affect native title to ensure they are valid under native title legislation.

### **What is the role of a native title manager?**

The advice and oversight of native title managers will be required for certain land management dealings including the issuing of leases, licences and permits and the approval or submission for approval of plans of management that authorise or permit certain dealings that may affect native title.

Written native title manager advice is required for these kinds of dealings for Crown land that is managed by a council manager or category 1 non-council manager, or vested in a council under Division 4.2 of the CLM Act, unless the land is excluded land.

Native title managers are not required to establish whether native title rights and interests have been extinguished in relation to Crown land.

## What is excluded land?

Part 8 of the CLM Act provides that native title manager advice is not required for dealings in relation to *excluded land*. Excluded land generally covers land for which there is sufficient evidence to show that native title does not exist or has been wholly extinguished, or for which a 'clearance' has been given for an act to be validly carried out in relation to native title.

*Excluded land* is defined in the CLM Act and includes:

- land where all native title rights and interests in relation to the land have been compulsorily acquired
- land subject to an approved determination\* of native title (as defined in the NT Act) that has determined that:
  - all native title rights and interests in relation to the land have been extinguished, or
  - there are no native title rights and interests in relation to the land
- land where all native title rights and interests in relation to the land have been surrendered under a registered Indigenous land use agreement (as defined in the NT Act)
- an area of land to which section 24FA protection under the NT Act applies
- land for which a native title certificate is in effect.

\*an approved determination of native title can only be made by the Federal Court, High Court or a recognised body.

Unless land is excluded land for the purposes of the CLM Act, it must be assumed that native title exists.

## Who can act as a native title manager?

Only persons who maintain qualifications or have completed training approved by the minister can provide advice as a native title manager, as required by Part 8 of the CLM Act.

Qualified native title managers can refer to other sources of information in generating their own advice as to whether dealings are valid under native title legislation.

## Who is responsible for native title liabilities for acts over Crown land?

Under the CLM Act, councils and category 1 Crown land managers will be liable for any acts they carry out on Crown land that may affect native title.

Councils and category 1 Crown land managers will not be liable for any acts that preceded their management or ownership of land affected by native title. This liability will remain with the State.

## More information

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