

Crown land tenures and native title

Certain Crown land licences and permits have terminated automatically, in accordance with a clause in those licences and permits, following the Bandjalang, Yaegl and Barkandji native title consent determinations.

Approximately 500 Crown land licences and permits (collectively called tenures) have automatically terminated as a result of the Barkandji, Yaegl and Bandjalang native title determinations. These Crown land tenures included a clause that stated that they would terminate if native title rights were found to exist in relation to the land.

The Crown land tenures that the Department of Industry - Lands (the Department) has confirmed to have terminated are all licences. A handful of enclosure permits may have also terminated.

Native title determinations are drafted to protect the rights of existing users of the land, including those that hold valid Crown land licences and permits.

There are thousands of Crown land licences and permits within the native title determination areas that have not been affected.

This factsheet deals with a subset of licences that are no longer valid because they include a clause that says that they will be terminated by native title determinations.

How the NSW Government is responding

The NSW Government is committed to working with licence holders and native title holders to identify an appropriate way to reissue licences.

The Department is undertaking a review of all licences that have terminated in order to identify which licence can be reissued. In some instances it will not be able to reissue licences without first reaching an agreement with the relevant native title holders.

The NSW Government is currently identifying how best to negotiate such an outcome through an Indigenous Land Use Agreement (ILUA) with the relevant native title holders.

What this means for you

If your licence has terminated, the Department will write to you directly advising you of the fact and how the situation is being addressed.

Please remember that many holders of Crown land licences and permits have not been affected by the Bandjalang, Yaegl and Barkandji native title determinations.

Native title determinations do not as a general rule affect freehold or leasehold titles. No tenures other than licences and a small number of enclosure permits have terminated as a result of the Barkandji, Bandjalang and Yaegl native title determinations.

Using Crown land if your licence or permit has terminated

You can continue to use the land as you have been under the terms of your licence, unless advised otherwise by the NSW Department of Industry. While the licence has terminated, the land remains Crown land and no action will be taken to affect the ongoing activities of those whose licences have terminated until the department has completed its review of the tenures.

The NSW Government will be moving as quickly as possible to:

- reissue licences where possible
- negotiate ILUAs with the relevant native title holders where appropriate and approved by the relevant NSW Government ministers.

Rent paid on a terminated tenure

The department is currently identifying the rent status of affected licences and will determine if a refund is appropriate and the best way of making these refunds.

If you have paid rent in relation to a terminated licence and are eligible for a refund you will be contacted by the department. Please note that it may take up to 10 weeks to determine the status of affected licences and for any appropriate refunds to be processed.

You do not need to contact the department about rent refunds. You will be contacted directly if a rent determination is made on an affected licence.

About the Native Title Act

The *Native Title Act 1993* is Commonwealth legislation passed by the Australian Parliament. Its object is to provide a national system for the recognition and protection of native title and also for its coexistence with the NSW state land management system.

The Attorney General is the state minister for native title under the *Native Title Act 1993* in NSW.

The NSW Government fully supports the *Native Title Act 1993* and is required to comply with its provisions when administering Crown lands.

The NSW Government supports the use of ILUAs, where appropriate, as they are a means of dealing with native title issues through cooperation and agreement. Approval from both the Minister for Lands and Water and the Attorney General will be needed before ILUAs can be negotiated with native title holders regarding the reissuance of the terminated licences.

Extent of native title determinations in NSW

The Federal Court of Australia has made several native title consent determinations in NSW that recognise that non-exclusive native title rights continue to exist over certain Crown land. The determinations that have automatically terminated licences are the:

- Bandjalang native title determination made on 2 December 2013
- Yaegl native title determination made on 25 June 2015
- Barkandji native title determination made on 16 June 2015.

In each of the above determinations the key non-exclusive native title rights that were recognised as existing in relation to some Crown land are the right to:

- enter, travel over and remain on a non-permanent basis
- engage in cultural activities, conduct ceremonies and hold meetings
- hunt, fish and gather the traditional natural resources for non-commercial, domestic and communal use
- camp (but not to permanently occupy or possess the land)
- use water
- light fires for domestic purposes but not for the clearance of vegetation
- access and maintain sites of significance
- teach.

Non-exclusive native title rights means that while the native title holders have the right to use the land as set out above, they cannot do so to the exclusion of others. The native title holders must also obey the laws of NSW and the Commonwealth at all times.

More information

For further information please contact:

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