Topic 1: Basic information about native title
Fact Sheet 2: What is Native Title?

What is Native Title?

Native title is the term used by the High Court to recognise the communal, group or individual rights of Aboriginal and Torres Strait Islander people in relation to their pre-existing and continuing connection with land and/or waters according to their traditional laws and customs.

Native title is defined in s223(1) of the Native Title Act 1993 (Cth) as:

"The communal, group or individual rights and interests of Aboriginal people 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 people or Torres Strait Islanders; and
• the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land and waters; and
• the rights and interests are recognised by the common law of Australia."

The High Court has stated that the Native Title Act 1993 (Cth) is at the core of native title proceedings where applications are brought under the Act. Most applications for a determination of native title have been made under the Native Title Act 1993 (Cth). The extent to which native title is capable of being recognised under the Native Title Act 1993 (Cth) is a very complex partly because the history of land tenures and administration in each State and Territory is so different. Therefore, the Federal and High Courts will, from time to time, be required to clarify the extent to which native title rights and interests can be recognised and protected under the Native Title Act 1993 (Cth).

By comparison with other common law countries such as New Zealand, Canada and the United States of America, Australia is a relative newcomer to dealing with the native title rights and interests of its Indigenous peoples.