

A photograph of two men standing under a large white tent at an outdoor event. The man on the left is seen from the back, wearing a black traditional Indigenous Australian garment with white fringe. The man on the right is wearing a grey suit, a white bucket hat, and has a white beard. They appear to be in conversation. In the background, other people are seated on the grass, and a white vehicle is parked. A white plastic chair and a table with a water bottle are visible in the lower left foreground.

The Native Title Act **MADE SIMPLE**

NATIVE TITLE ACT



HISTORY

The Aboriginal Land Rights Act was passed by Federal Parliament in 1976, but this law was only for Aboriginal people living in the Northern Territory. Indigenous people in other parts of Australia missed out.

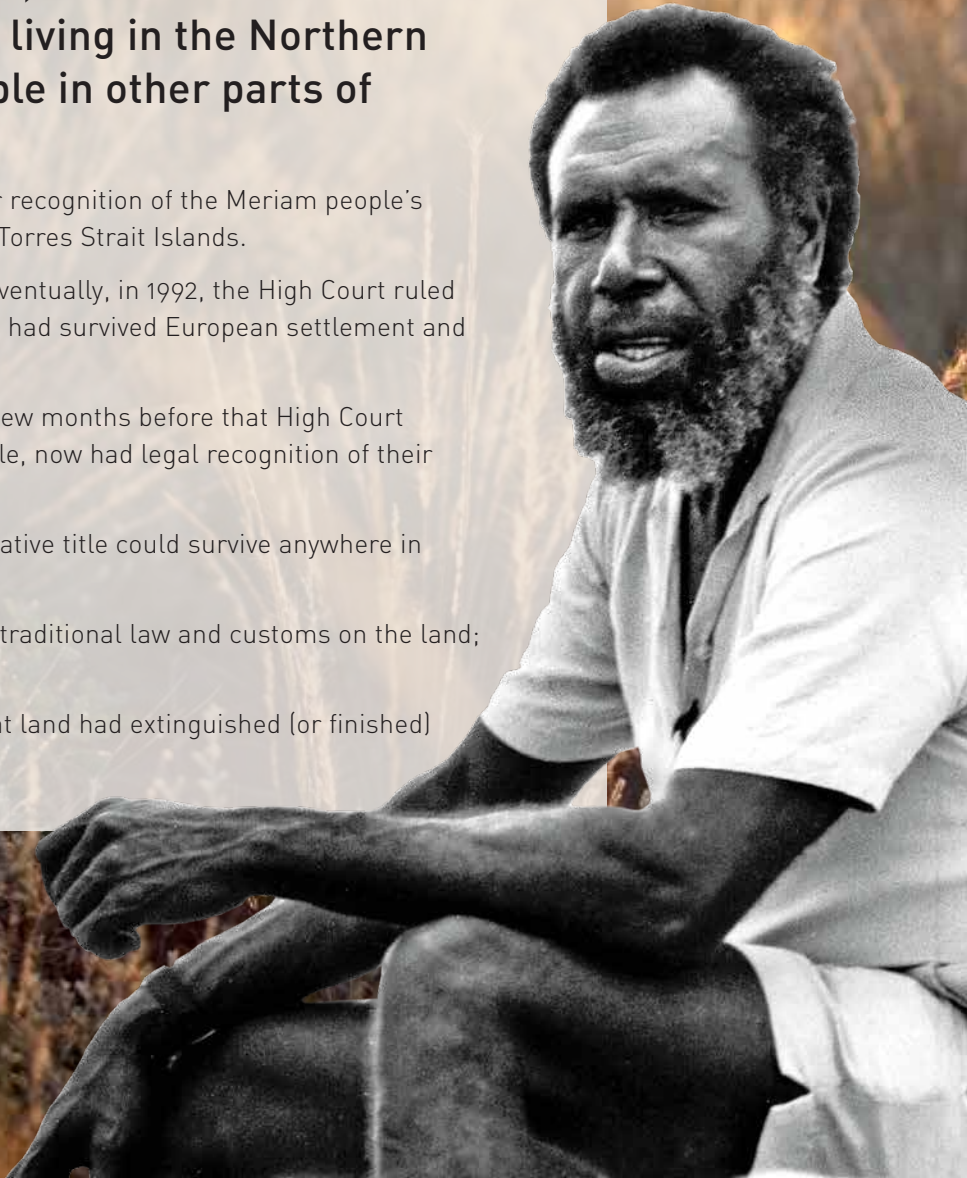
In 1982 Eddie Mabo started legal action for recognition of the Meriam people's rights over their traditional country in the Torres Strait Islands.

The legal battle went on for 10 years and eventually, in 1992, the High Court ruled that Indigenous traditional title to the land had survived European settlement and it was called native title.

Unfortunately Eddie Mabo passed away a few months before that High Court decision. But his people, the Meriam people, now had legal recognition of their rights over their islands.

The High Court decision also meant that native title could survive anywhere in Australia so long as:

- Indigenous people had maintained their traditional law and customs on the land; and
- No other titles allowing ownership of that land had extinguished (or finished) the native title.



SO WHAT IS NATIVE TITLE?

- It is recognition by Australia's laws that Indigenous people had a system of law and ownership of their lands before European settlement;
- It recognises that Aboriginal people have rights and interests in their lands and waters through their traditional laws and customs;
- Native title recognises that Indigenous people have traditional rights to speak for country;
- But native title does not provide Indigenous people with ownership of the land like land rights does.



NATIVE TITLE ACT

NATIVE TITLE ACT

In 1993 the Australian Government made the Native Title Act (NTA). The NTA tries to balance Indigenous and non-Indigenous peoples' rights to land.

If native title was extinguished by the grant of other titles or acts since 1975, the Racial Discrimination Act may require that compensation be paid to native title holders.

When native title is cancelled out

The NTA explains when native title is cancelled out. For example:

- Freehold titles and most leases over land extinguish (or finish) native title completely;
- Pastoral leases only partially extinguish native title; and,
- Aboriginal titles, like land rights title or Aboriginal-owned pastoral stations, will generally have no effect on native title.
- Some land titles will generally extinguish (or finish) native title completely, but a pastoral lease will only extinguish some native title rights.

What rights do you get from native title?

Many native title claims are for shared rights to the land with other people who also have an interest in the land.

Recognition of native title may give Indigenous people the right to hold ceremony, gather bush tucker or have a say on what development can happen on the land.

Examples of native title rights:

- The right to protect sites;
- The right to access or hunt;
- In some cases, the right to camp or live on the land and share in money made from the development of the land;
- The right to hold ceremony; and,
- The right to have a say on the management or development of the land.

Native title DOES NOT give you:

- Ownership of the land;
- The power to take away other people's rights to the land, like a pastoralist or a company with a mining licence; or,
- The right to stop developments.



COMPENSATION

Sometimes native title holders will be financially compensated for the loss of native title rights or because some activities are taking place on the land.

These might include mining, farming and tourism or any other development that extinguishes or affects native title on the land.

Indigenous Land Use Agreements

The NTA also allows governments, companies and native title holders to negotiate agreements about future developments on the land. These are called Indigenous Land Use Agreements (ILUAs). ILUAs are like normal agreements or contracts but the NTA ensures:

- That the future developments covered in the ILUA are valid, and
- That all Aboriginal groups in the area are bound by the ILUA.

This allows developers to make plans for development and means native title holders can negotiate employment opportunities and compensation and the protection of sacred sites.

Mining

Under the NTA, the Government must notify native title holders of any new exploration proposal. If the Government thinks the effect on native title will be minor, it can fast track the proposal. This is usually done for exploration which doesn't involve much digging on country.

If the fast track is used, the company does not have to negotiate with native title holders and can just carry out the exploration.

If the Government decides the fast track does not apply, the company needs to negotiate (or talk) with native title holders about its plan.

In the CLC's experience, companies have been willing to negotiate ILUAs for exploration so they can build relationships with native title holders even if the native title claim hasn't been registered.

Native title holders will always have a right to negotiate over the actual mining process as long as they have a registered native title claim.

So native title holders can usually negotiate an agreement about exploration or mining with benefits for employment and the protection of sites, but they will not be able to block any application by a company.

NATIVE TITLE MINING PROCESS

Exploration or 'look around'				Mining
Notice from Government Fast track applies (lower impact)		Notice from Government Fast track does not apply (higher impact)		Notice from Government Right to negotiate applies
If do nothing	If want to say no	If want to make agreement	Make agreement	Make agreement
The licence will be granted if there is no objection within 4 months	<p>No right to block but can:</p> <ul style="list-style-type: none"> • try and talk to company within 4 months (note: other companies will not be blocked from making fresh applications like in Land Rights Act) <p>Result: Application withdrawn OR licence granted - no agreement</p> <ul style="list-style-type: none"> • lodge objection within 4 months to expedited procedure. If win objection then fast track does not apply but licence will not be stopped (note: only a couple have been successful) 	No requirement but company may agree to make agreement (for relationship and goodwill purposes)	Parties must negotiate in good faith to make agreement, licence cannot be blocked	Company must negotiate in good faith to make agreement, lease cannot be blocked
Result: Licence granted - no agreement	Result: Fast track does not apply OR licence granted - no agreement	Result: Licence granted - with agreement	Result: Licence granted - with agreement	Result: Lease granted - with agreement

NATIVE TITLE CLAIMS

A native title claim can be made to help protect country against future development or to have a group's rights over country recognised. Claims must be made in the Federal Court and include affidavits (or stories) from some of the main people in the group.

A claim is assessed by the Native Title Tribunal (which assists the Federal Court) to test if native title exists. If the claim passes that test, the tribunal will register the claim. That means the Indigenous people who've made the claim have a right to be consulted about any future development on the land. If the claim does not pass the test, a company or government does not have to consult with the people who made the claim.

After the registration test is completed, the Federal Court will send the claim to mediation. The Native Title Tribunal will work with the NT Government and the claimants to try to resolve the claim by agreement during this mediation.

If the parties can agree, the Federal Court will make a ruling called a consent determination. This means native title is recognised by agreement without a court hearing.

If the parties cannot agree, the claim will be heard by the Court. The Court will be looking to check:

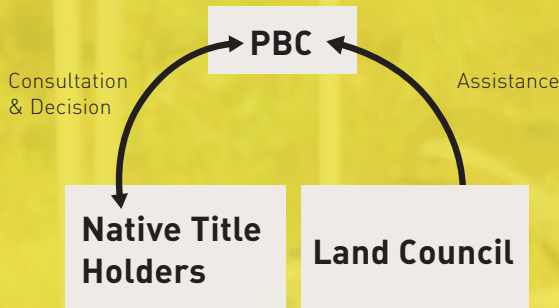
- If the Indigenous land system has continued, and
- If any government land titles have extinguished the native title.

So a group can have native title recognised by agreement or in court if it has strong stories about its right to speak for that land.

LOOKING AFTER NATIVE TITLE

If native title is granted, the court must decide what organisation will look after that title. The organisation that manages it is called a prescribed body corporate (PBC).

The native title holders nominate who the PBC will be and governments and companies must deal with that PBC, not the Land Council, although the Land Council can still help the PBC.



The PBC is responsible for any decision which will affect the claimants' native title rights. Before making a decision, the PBC must talk with the native title holders and get their approval.

All members of the PBC must be members of the native title holding group.

Native title bodies

The NTA recognises native title bodies that assist native title holders. The CLC is recognised as the native title body for Central Australia.

All native title bodies must assist native title holders and PBCs to:

- Make native title applications;
- Negotiate agreements about future developments; and
- Resolve disputes between groups.

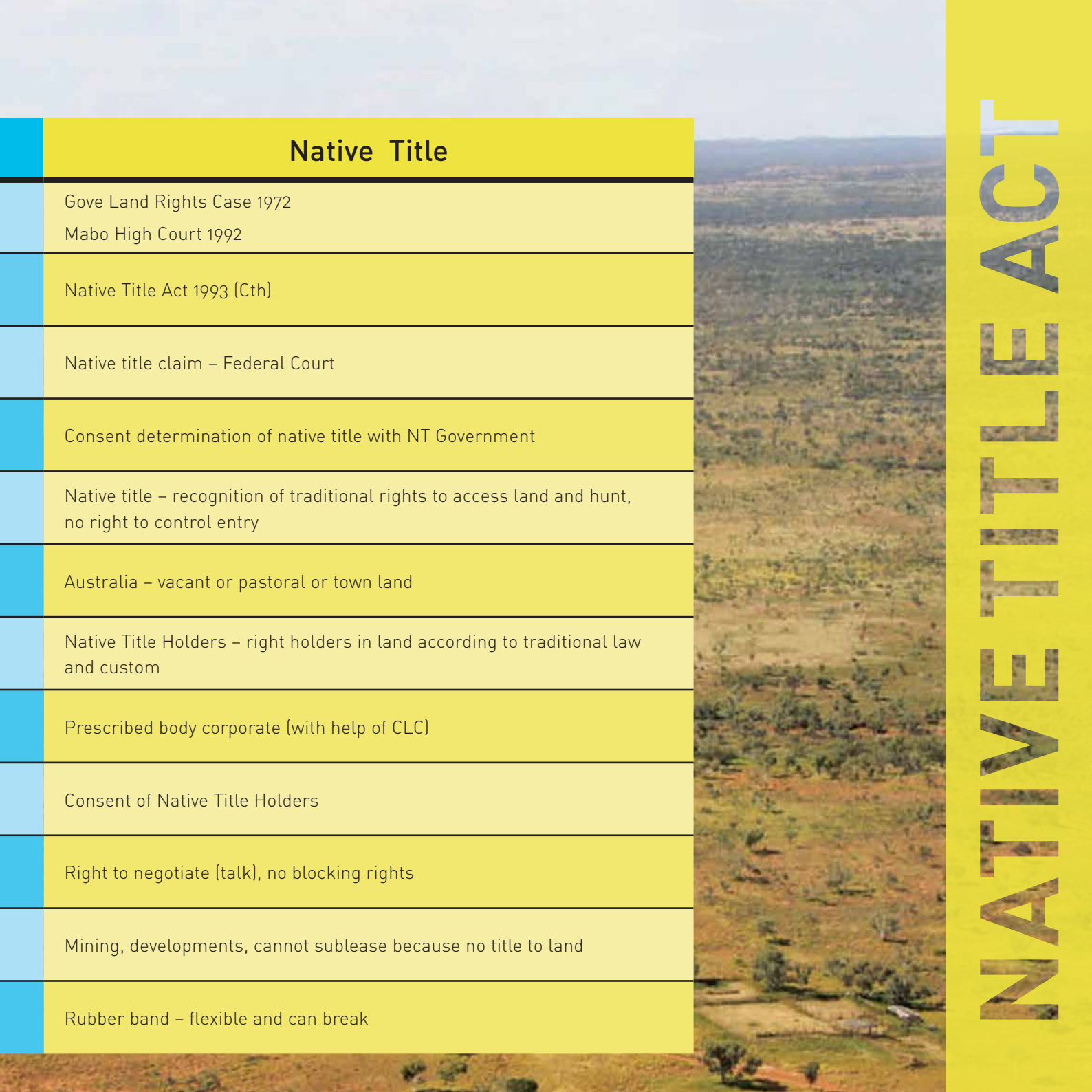
Preserving native title rights

Sometimes governments regulate activities such as fishing, hunting or access to land with licences or permits, but under the NTA, Aboriginal people don't need these licences or permits if the activities are done as a native title right. If the Government prohibits or bans an activity completely, native title does not get around this ban.

For example, if the Government regulated bilby hunting with permits, Aboriginal people could still hunt bilbies. If the Government banned bilby hunting, Aboriginal people could no longer hunt bilbies, but they might be entitled to compensation for taking away native title rights.

COMPARISON OF LAND RIGHTS AND NATIVE TITLE

	Land Rights
History	Woodward Commission 1974 Whitlam/Fraser 1976
Law	Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)
How – Fight	Land claim – Land Commissioner
How – Agree	Commonwealth Minister agrees to grant freehold title
What	Freehold title – ownership of land, right to control entry with permits
Where	NT – vacant (empty) land, not pastoral or town land
Who	Traditional Owners – ‘primary spiritual responsibility’ for sites
Decision Makers	CLC on behalf of Land Trust
Decision Process	Consent of Traditional Owners Consult with affected communities
Development – Blocking	Right to block mining, compulsory acquisition
Development – Agreements	Mining, developments, can sublease
SUMMARY	Rock – strong and won’t break



	Native Title
	Gove Land Rights Case 1972 Mabo High Court 1992
	Native Title Act 1993 (Cth)
	Native title claim – Federal Court
	Consent determination of native title with NT Government
	Native title – recognition of traditional rights to access land and hunt, no right to control entry
	Australia – vacant or pastoral or town land
	Native Title Holders – right holders in land according to traditional law and custom
	Prescribed body corporate (with help of CLC)
	Consent of Native Title Holders
	Right to negotiate (talk), no blocking rights
	Mining, developments, cannot sublease because no title to land
	Rubber band – flexible and can break

NATIVE TITLE ACT

CASE STUDIES

Nearly 130 years after European settlement began in Central Australia, the common law of Australia finally recognised the native title rights and interests that Arrernte people have exercised as the owners of the Alice Springs area for thousands of years.

This decision was the first in Australia to recognise native title in an urban area.

The Arrernte people lodged a claimants application with the National Native Title Tribunal in 1994 but no agreement could be reached with the Government.

In 1996 the application went to the Federal Court.

The Court heard from the native title claimants about how they and their ancestors have continued to live in

and around Alice Springs, hunted and gathered bush tucker and bush medicines and other resources on their country, and have continued to look after the country and exercise their rights to make decisions about it.

In May 2000, six years and several hundred thousand dollars later, the Federal Court recognised coexisting native title rights and interests on most reserve, park and vacant Crown land and waters within Alice Springs (including rights to possess and occupy, use and enjoy the land, and make decisions about the use of the land).

The Arrernte set up Lhere Artepe as the Prescribed Body Corporate to make those decisions about future land use in the town



In September 2007 Tennant Creek became the first town in Australia to have a native title determination made by consent rather than litigation.

This recognition by the Federal Court was followed immediately by the native title holders, the Central Land Council and the Northern Territory Government signing an Indigenous Land Use Agreement.

The agreement sets out the areas within the town boundary where native title is extinguished, areas within the municipal boundary where native title is recognised, how the native title holders are to be compensated, and confirms that negotiations are to commence toward the creation of a park at the Devil's Pebbles.

It has been a long, hard road for the Patta Warumungu people of Tennant Creek. While they won much of their traditional land back under the Aboriginal Land Rights Act, they made enormous compromises in their claims.

Not only were they forced to drop much of their legitimate claim for country around the town, but the claim dragged on for at least 20 years as they battled with the Northern Territory Government all the way to the High Court.

In addition, under the Land Rights Act, land within the town boundaries was unable to be claimed.

The issue of a native title claim was first discussed in 1996 and the first application made in 1999.

A new application was filed in 2006 which covered all of the town.

Negotiations and mediation between the claimants and the Northern Territory Government took some time to work through the many complex issues but a solution which suited everybody was reached.

That agreement meant that the Federal Court could hand down a consent determination.

Patta Aboriginal Corporation is the native title body representing the Native Title Holders for the town of Tennant Creek.

Exclusive possession: Ooratippra native title consent determination

A native title consent determination for exclusive possession of the Ooratippra pastoral lease was made by the Federal Court in 2011.

The property, covering 4300 square kilometres, is 300 kilometres north east of Alice Springs and contains a Community Living Area which are small areas given back to Aboriginal people who were unable to claim their traditional land back under the Aboriginal Land Rights Act.

As the pastoral lease and community living area are owned by native title holders, they were able to claim exclusive possession ("to the exclusion of all others") under the Native Title Act, rather than the non-exclusive rights which usually co-exist with pastoral lessees.

The recognition of native title rights secures their traditional rights, and in particular, the right to exclusive possession of the land as well as the right to negotiate over any future acts like mining.

The Indigenous Land Corporation purchased Ooratippra in 1999 after years of lobbying by native title holders who wanted title to their own land and run their own cattle business on their own country.

The claim was made on behalf of several hundred Aboriginal people: the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn estate groups of the Alyawarr language group.



Consent determination: Native title holders and conservationists

In 2010 the first native title consent determination between traditional owners and a non-government conservation organisation was handed down.

The consent determination is between the Australian Wildlife Conservancy at Newhaven Wildlife Sanctuary.

It is an example of how leaseholders and traditional owners can work together for mutual benefit.

The consent determination is important because it recognises that Aboriginal laws and customs still hold a place of importance in today's society.

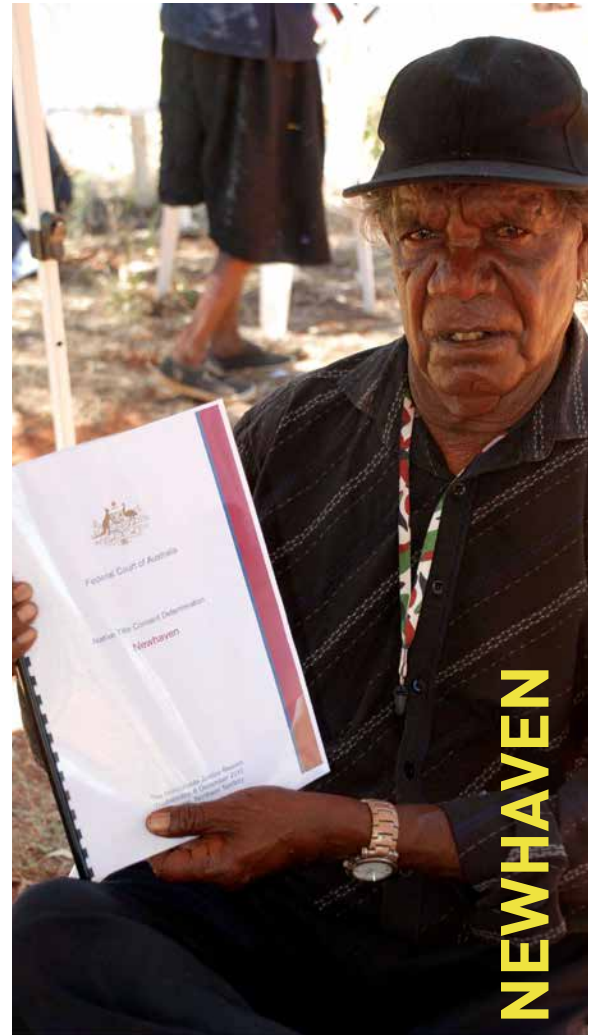
AWC which holds the lease over Newhaven and the Warlpiri-Luritja traditional owners had already built up a working relationship cooperating on fire management and biological survey projects on the property.

It said the formal recognition of native title was an important step in further strengthening the partnership, and the combination of science and traditional knowledge was a powerful tool in delivering effective land management for remote protected areas such as Newhaven.

It took 10 years in the Federal Court and in negotiations involving traditional owners and different owners of the lease to reach the consent determination.

Newhaven covers an area of more than 2,600 square kilometres and is one of the largest non-government conservation areas in the world.

It is a hotspot for threatened species such as Black-footed Rock-wallabies, Brush-tailed Mulgara and Great Desert Skinks. One of the few recent sightings of the endangered Night Parrot was also recorded on Newhaven.



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