

Changes to the recognition of previously registered native title claimants as native title parties: Supreme Court decision in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321

FACT SHEET

What has changed?

Section 34(1)(b)(i)(C) of the *Aboriginal Cultural Heritage Act* and the *Torres Strait Islander Cultural Heritage Act 2003* (Cultural Heritage Acts) establishes that the last registered native title claimant is a 'native title party' only if there 'is not, and never has been, a native title holder for the area'.

On 20 December 2017, in the matter of *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321 (*Nuga Nuga*), Jackson J rejected the Minister's submission that 'native title holder' in section 34(1)(b)(i)(C) referred only to a native title holder as identified in a positive determination of native title under the *Native Title Act 1993* and found that native title holder also refers to a person who held native title at common law.

The *Nuga Nuga* decision means that the application of the so-called 'last claim standing rule' no longer applies in the way previously understood by the Department.

What does this mean for previously registered native title claimants?

The Department's preliminary view is that it is likely that at some time in the past there would have been a native title holder at common law in most parts of Queensland, and where this is the case, it is not possible to say there 'never has been' a native title holder for the particular area.

This means previously registered native title claimants may no longer be considered a 'native title party' (as that term is used in section 34 of the Cultural Heritage Acts for their former claim areas. However, where this is the case, the previously registered native title claimants may consider they meet the definition of an 'Aboriginal party' under section 35(7) of the Cultural Heritage Acts. If so, these parties may wish to advise the Department of this.

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What is the Department doing?

Following the Nuga Nuga decision, the Department is now considering whether previously registered native title claimants can continue to be recognised as a 'native title party'.

The Department maintains the Aboriginal and Torres Strait Islander Cultural Heritage Register, which many people search via the Aboriginal and Torres Strait Islander Cultural Heritage Online Portal. The Department has removed all previously registered native title claimants as 'native title parties' from the Online Portal. Any searches conducted in affected areas will direct the person to the Department for further information as to the identification of Aboriginal parties in that area.

The Department is also considering removing previously registered native title claimants as 'native title parties' from the Aboriginal and Torres Strait Islander Cultural Heritage Register. The Department will make a decision on a case by case basis and has written to all affected parties seeking their views on this change to the Cultural Heritage Register.