Department of
Primary Industries and
Regional Development
GOVERNMENT OF
WESTERN AUSTRALIA

Australian Government
Indigenous Land and Sea Corporation

The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

Setting up for Success

Land Tenure

A practical guide for Aboriginal communities, corporations
and Registered Native Title bodies Corporate in Western Australia


Burdett

Acknowledgement of Country

The Department of Primary Industries and Regional Development (DPIRD) acknowledges the Traditional Custodians of Country, the Aboriginal people of the many lands that we work on and their language groups throughout Western Australia, and recognises their continuing connection to the land and waters. DPIRD respects the continuing culture of Aboriginal people and the contribution they make to the life of our regions and we pay our respects to Elders past, present and emerging.

Acknowledgements

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Cultural Sensitivity Warning

Aboriginal and Torres Strait Islander people should be aware that this publication may contain images and names of people who are now deceased.

Important Disclaimer

The Chief Executive Officer of the Department of Primary Industries and Regional Development and the State of Western Australia accept no liability whatsoever by reason of negligence or otherwise arising from the use or release of the information in this document or any part of it. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

The information in this document is to be treated as guidance only. When considering the grant of land tenure under the *Land Administration Act 1997* (WA), each project is considered on an individual basis, because each project, parcel of land and the aspirations of Aboriginal communities and organisations can vary. You are encouraged to contact the Land Use Management division of the Department of Planning, Lands and Heritage early in project planning to seek preliminary advice on project requirements and impacts it may have to Crown land.

Artwork by Rickesha Burdett

Contents

Abbreviations

ARENA	Australian Renewable Energy Agency
AAPA Act	*Aboriginal Affairs Planning Authority Act 1972* (WA)
ACHIS	Aboriginal Cultural Heritage Inquiry System
ALT	Aboriginal Lands Trust
CALM Act	*Conservation and Land Management Act 1984* (WA)
CLEF	Crown Land Enquiry Form
DBCA	Department of Biodiversity, Conservation and Attractions (WA)
DEMIRS	Department of Energy, Mines, Industry Regulation and Safety (WA)
DPIRD	Department of Primary Industries and Regional Development (WA)
DPLH	Department of Planning, Lands and Heritage (WA)
DWER	Department of Water and Environmental Regulation (WA)
GIS	Geographical Information System
ILUA	Indigenous Land Use Agreement
ILSC	Indigenous Land and Sea Corporation
IPA	Indigenous Protected Area
JTSI	Department of Jobs, Tourism, Science and Innovation (WA)
LAA	*Land Administration Act 1997* (WA)
NNTT	National Native Title Tribunal
NGO	Non-government organisation
PBC	Prescribed Body Corporate
PLB	Pastoral Lands Board
RNTBC	Registered Native Title Body Corporate
NTA	*Native Title Act 1993*

Key terms used in this guide

A glossary of terms can be found at the end of this guide.

Aboriginal communities refers to the various groups of Aboriginal people in Western Australia.

Aboriginal organisations refers to the various types of Aboriginal organisations in Western Australia, whether formal or informal, with whatever purposes, whether incorporated or not, and if incorporated, under any incorporation legislation.

Land refers to land and waters of Western Australia.

Native title party describes native title holders, native title claimants or the legal entity holding native title rights and interests on behalf of the native title holders. That is, peoples and organisations involved in the recognition of native title rights and interests pursuant to the *Native Title Act 1993* (Cth).

Traditional Owners refers to peoples with a traditional connection to particular lands and waters, and **Traditional Country** refers to those particular lands and waters. They are used as general terms.

Registered Native Title Body Corporate (RNTBC) and Prescribed Body Corporate (PBC) are used to describe a legal entity that holds native title rights and interests on behalf of a native title holder.

Introduction

What is the purpose of this guide?

Understanding how Crown land tenure works in Western Australia (WA) is important for Aboriginal communities and organisations when making plans for long-term goals and projects involving land.

The purpose of this guide is to:

1. provide planning tools to assist with preparing for an application for land tenure;
2. outline key features of the different types of Crown land tenure available in WA;
3. clarify the process for obtaining a grant of Crown land tenure.

What is Crown land tenure?

Crown land is all land in WA excluding freehold land, which is land with a freehold title.

Crown land includes land where native title rights and interests exist.

Currently, 92% of the land in WA is called Crown land and 8% is freehold land.

Most of the freehold land is concentrated in and around cities and townships.

Land tenure refers to the different ways to own, manage or hold rights and interests in land, which are granted under Western Australian law by the WA state government.

Land tenure determines:

- who can use the land;
- the purposes for which the land will be used;
- how long the land will be used;
- the conditions under which the land is used.

What is the Land Administration Act?

The *Land Administration Act 1997* (WA) (LAA) is the law that sets out the rules for making grants of land tenure over Crown land in WA.

The LAA provides a lot of flexibility. There are many different types of land tenure that can be granted over Crown land under the LAA, which will be covered in this guide.

Good to know!

The Minister for Lands is the Minister who makes decisions on land tenure over Crown land under the LAA. The Department of Planning, Lands and Heritage (DPLH) is the WA government department that assists the Minister for Lands with their responsibilities under the LAA.

The Land Use Management division of DPLH is managed by regional and metropolitan teams. It is recommended you contact DPLH early in your project planning for preliminary advice.

The contact for assistance at DPLH is proposals@dplh.wa.gov.au or call 08 6551 8002 to speak to someone from the relevant regional team.

Are native title rights and interests a type of land tenure?

Native title is the recognition under Australian law of pre-existing rights held by the first owners and occupiers of the land according to traditional laws and customs that existed before European settlement, and which continue to exist today.

Although native title rights and interests are not a type of land tenure under the LAA, there are similarities with land tenure.

For example, native title rights include rights over land, such as a right to exclusive possession or, where non-exclusive rights exist, rights to use land for certain purposes.

There are also important differences between native title rights and interests, and land tenure.

For example, it is not possible for a native title party to simply lease land subject to exclusive native title rights. To do so, the native title party needs to hold some form of land tenure that includes a right to lease the land.

Get legal advice

Land tenure can open up opportunities for Aboriginal communities and organisations. However, it is important to understand how the grant of land tenure also creates responsibilities.

If you are a native title party, it is also important to understand any consents that may be required and how this will affect your native title rights and interests during the term (life or length) of the tenure.

All tenure matters require independent legal advice and assistance.

Important to know

Where native title rights and interests exist, an Indigenous Land Use Agreement (ILUA) may be required before any land tenure can be granted.

The ILUA ensures that the native title party provides its consent to the land tenure, because the land tenure will most probably affect the exercise of native title rights and interests.

For information on ILUAs, go to Section 4.

Why is land tenure important?

Land tenure can complement native title rights and interests, increase control over land, protect Country, and support the cultural, social and economic goals of a community or organisation.

For example, land tenure can:

- assist with securing a bank loan or funding;
- permit certain land uses;
- provide strong protections over land for cultural and environmental purposes.

Every project has unique circumstances. If you require access to land, land tenure or a change of land tenure for your project, you will need to consider the most appropriate land tenure for the circumstances in discussion with DPLH's Land Use Management Division.

Land tenure may allow a certain activity, but additional permits, authorisations or land development approvals may also be required before the activity can lawfully occur on the land.

Some activities are not permitted under Crown land tenure. For example, exploration for minerals and mining can only be conducted under mining tenure, referred to as mining tenements, which are granted under the *Mining Act 1978* (WA).

Mining tenements and petroleum titles granted under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) can be granted over and co-exist with Crown land tenure and native title rights.

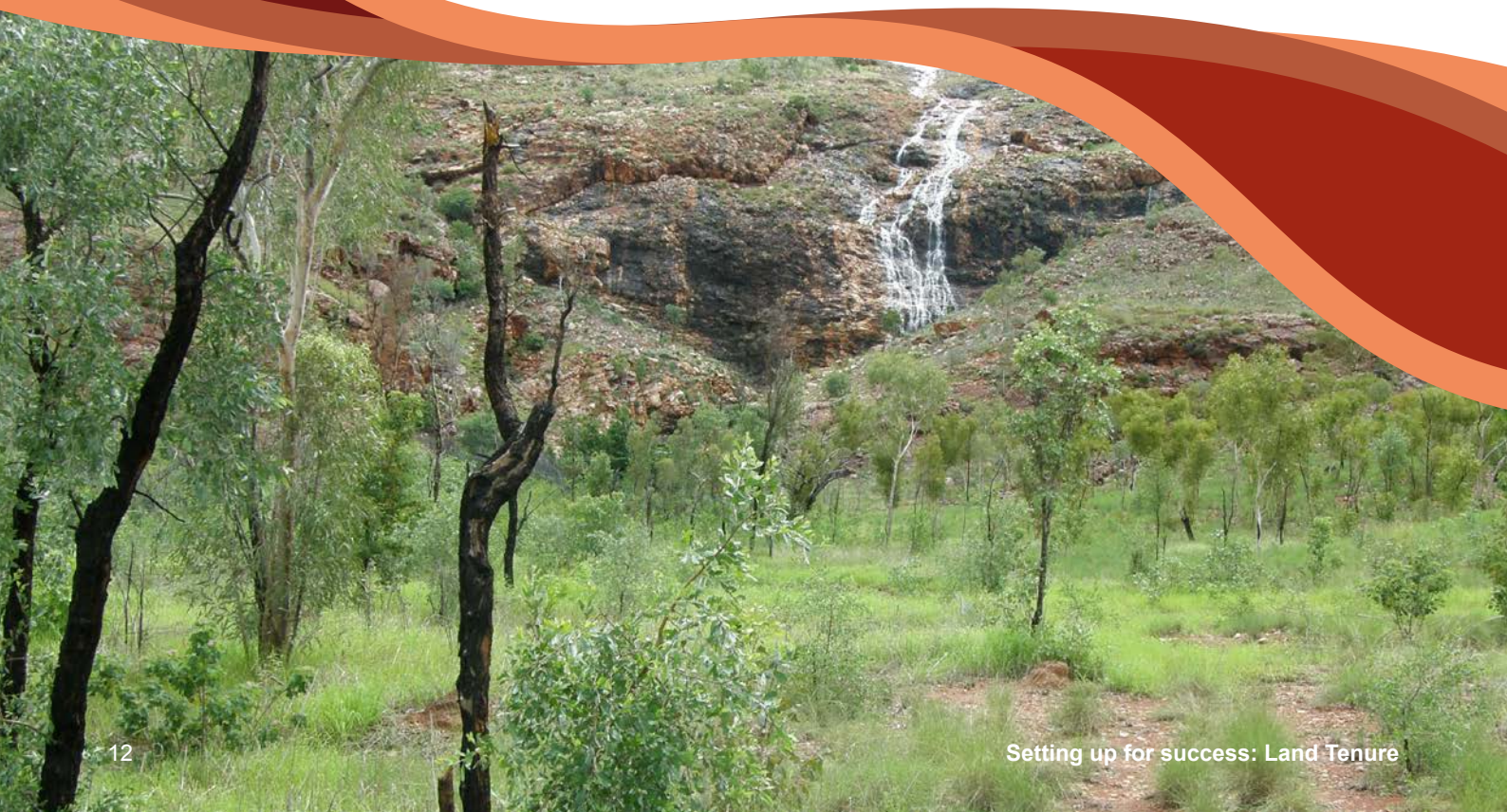


Figure 1 shows there may be several different rights and interests present over any one parcel of land at the same time, highlighting the complexities which must be considered when investigating the grant of land tenure. This guide explains the primary land tenures under the *Land Administration Act* 1997 which are shown in Figure 1.

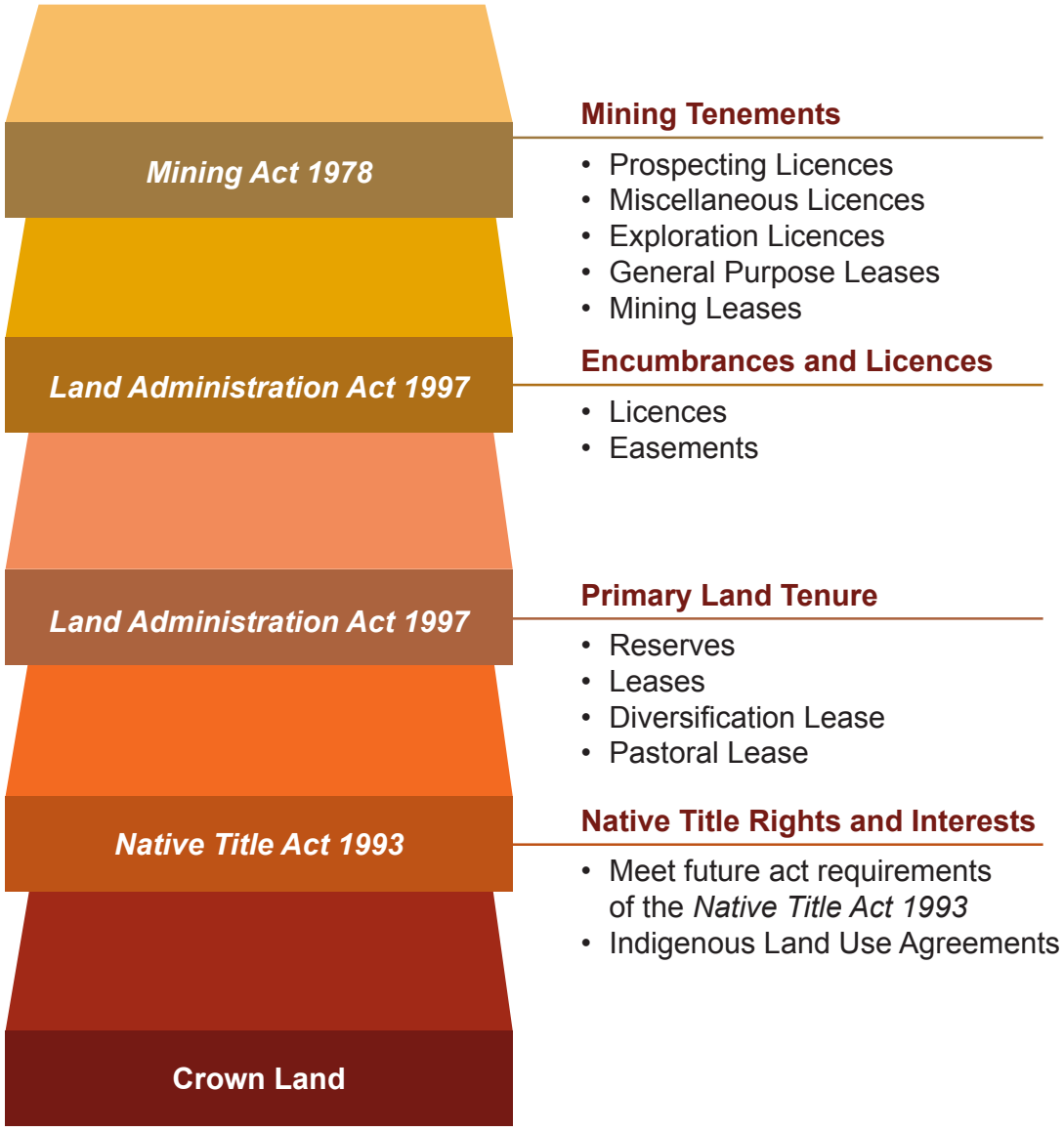


Figure 1: Land tenure layer diagram

Why is planning needed?

Securing land tenure is a big project. It takes time and resources, and will be in place for a long time. Land tenure comes with obligations, responsibilities and costs.

It is important to be clear on what the future use of the land will be, whether it is possible and that you can obtain the financial support you may need for the project.

This requires good planning processes, due diligence and a business plan to make sure the land project is realistic and can be successful. The planning tools included with this guide can assist with this process.

Important to know

Whatever the land tenure, whether it is on Crown land or a freehold title, and whatever the status of native title rights (whether it exists or not), Aboriginal heritage exists throughout WA and heritage protection laws apply throughout the state. The laws are the:

- *Aboriginal Heritage Act 1972* (WA)
- *Aboriginal and Torres Strait Islander Act 1984* (Cth)

For advice on compliance with the heritage protection laws that apply, contact Aboriginal Heritage at DPLH on 6551 8002 and see the DPLH website.

Who is this guide for?

A range of Aboriginal communities and organisations, whatever their circumstances.

Aboriginal communities that hold Native Title rights and interests and have significant areas where Native Title rights and interests have been extinguished. As part of a Native Title compensation settlement agreement, the WA government may offer land tenure over Crown land.

An Aboriginal corporation that is discussing joint vesting and joint management with the Department of Biodiversity, Conservation and Attractions (DBCA) as a result of a proposal for a new national park.

A community-based Aboriginal organisation that is seeking a lease over Crown land to provide a community service, such as a family support service or run a business such as an art centre.

A Native Title party that wants land tenure to support it to pursue economic development opportunities.

An Aboriginal corporation that holds a pastoral lease and wants to investigate a change of land tenure to change the key activities.

Aboriginal communities who live outside their traditional Country and hold some form of land tenure or live on a reserve held by the Aboriginal Lands Trust (ALT).

Groups that have negotiated alternative Native Title settlement agreements with the state, in which Native Title rights and interests have been exchanged for a package of benefits that includes grants of tenure over Crown land.

How to use this guide

This guide contains 15 sections. Table 1 outlines the information in each section.

Table 1: Overview of the information in each section of this guide

Section	What is it about?
1	**Goals and land use planning** Steps out how to implement high-level planning, usually for large areas of land where multiple potential land uses may be identified for different areas. This first step helps to identify community goals and aspirations for the land and any important factors that may guide future decisions.
2	**Project feasibility** Outlines how to implement more detailed planning, usually over specific and smaller areas of land, to explore the possibility of an identified project through a due diligence assessment and business plan.
3	**State approvals and due diligence** Explains the process of approvals and due diligence that must be undertaken by DPLH before a grant of land tenure can be made by the Minister for Lands.
4	**Indigenous Land Use Agreements** Details the additional requirements that apply when land tenure is requested over land where native title rights and interests exist or may exist.
5	**Tenure types – summary** A summary table of seven different land tenure types that can be granted over Crown land. The table will help you to compare and contrast the tenure types.
6-10	**Tenure types – detail** These sections explain the following land tenure types in detail: • managed reserves • diversification leases • pastoral leases • exclusive possession leases, including leases to advance Aboriginal interests • freehold, including conditional freehold.
11	**Licences and easements** Discusses licences which allow you to investigate the feasibility of a land project, and easements which provide land access through adjoining land and/or access for services.
12	**Conservation estate** Focuses on land used for conservation purposes under the *Conservation and Land Management Act 1984* (CALM Act) and the special protections, permitted land uses for Aboriginal people and the management structures that can apply.
13	**Aboriginal Lands Trust divestment** Outlines the process for transferring the Aboriginal Lands Trust (ALT) estate to the direct control and management of Aboriginal people and organisations.
14	**Indigenous Land and Sea Corporation (ILSC)** Looks at the assistance the ILSC can provide in planning for, obtaining and managing land.
15	**Where to from here?** Lists organisations that can provide more information and support.

Part 1 - Goals and land use planning

Pursuing land-related opportunities will depend on a variety of factors, including:

- the goals, aspirations and priorities of an Aboriginal community or organisation;
- whether land is suitable for the proposed use, based on its unique features and characteristics such as topography and ground conditions, access to utilities and roads, heritage and environmental features;
- any existing tenure, rights and interests in land (including native title rights and interests);
- the people within the organisation and whether they have the time or skills to progress the project;
- the resources and funding of the organisation and any opportunities to secure additional resources or funding;
- access to good quality, independent information on economic opportunities and risks;
- the time and costs associated with project development, including obtaining tenure, and all relevant consents and approvals.

An assessment of these factors will assist to identify what additional work, information or assistance may be required to progress towards the goals and aspirations of your organisation.

It is important that organisations come together to identify and define their goals, priorities, capacity and capability.

Linking the goals and aspirations to social, cultural and economic outcomes will assist with securing support for your proposal.

Examples of goals for which you might want to pursue land tenure

- Having access to an outstation or campsite
- Protect culturally significant areas
- Land/water management, conservation or environmental protection of land
- Land for a community purpose or service
  - hostel
  - housing
  - art centre
  - health clinic
  - childcare centre
  - community solar farm
  - recreation centre
  - other
- Land for a commercial or economic development purpose
  - housing
  - roadhouse
  - nursery
  - market garden
  - earthmoving business
  - tourism operation
  - aquaculture
  - house construction business
  - agricultural activity, irrigated agriculture
  - large scale wind and/or solar farm
  - grazing or pastoral activities
  - engaging in the mining resources industry
  - diversifying the use of a pastoral lease
- Managing land for carbon farming, biodiversity and other environmental offsets
- Strengthen rights and interests in Country

Good to know!

The Department of Primary Industries and Regional Development (DPIRD) has a suite of Setting up for success guides, which detail the opportunities and risks for Aboriginal organisations interested in pursuing economic development projects in a range of industries, such as carbon farming, bushfoods and clean energy. Scan the QR code to learn more about Setting up for success guides.

Land use planning

Land use planning is a high-level investigation that helps make decisions about land use and land protection. It can be particularly helpful over a large area, such as a pastoral lease or land included in a determination of native title.

Land use planning helps figure out the highest and best use of land. This means finding the use that most benefits the land and community or aligns with the key values of the community or organisation.

Often Aboriginal communities and organisations may be faced with competing interests, from protecting land, to making money to benefit future generations. Land use planning can help make decisions that best align with goals and balance cultural environmental, social and economic values.

Land use planning helps put in place a plan for the use and management of land. It can also help with making decisions about applying for tenure, based on preferred land uses.

The land use plan should identify and prioritise possible land use projects – which would then be subject to a due diligence assessment and business case (see Section 2).

Land use planning helps:

- **protect culture and heritage:** makes sure important cultural places and Aboriginal heritage are protected;
- **look after land:** protects the land, water, plants and animals from harm;
- **support communities:** addresses the needs of the community – for example, in community living areas, it ensures there is space for housing, schools, recreational areas and health services;
- **plan for the future:** considers the needs of future generations;
- **explore new opportunities:** on a bigger scale, explores new opportunities that can benefit the environment and community;
- **balance development and protection:** finds a balance between using the land for economic development while also protecting the land;
- **guide decision-making:** involves the community to ensure the plan is fair and balanced.

What are the steps to land use planning?

1. **Be clear about your goals and values:** Within your community or organisation, be clear about the shared goals, values and principles that might inform any land use planning. Later, this will help guide choices and assist to prioritise projects.
2. **Understand the land:** Map out what is on the land, such as areas of cultural significance, areas of high environmental value, water sources and existing land tenure and uses.
3. **Talk to the community:** Good planning includes input from all the people who have an interest or knowledge about the land. This helps gather information and ideas, and further identify values and goals.
4. **Determine what land uses are possible:** Identify possible and practical land uses.
5. **Refine the list of possible land uses:** Determine which possible land uses align the best with community or organisational goals.
6. **Write up a plan:** After consultation and research, write up a plan that outlines what the land can be used for and identifies areas for different purposes. The plan could also identify and prioritise land use projects for more detailed assessments (see Section 2).
7. **Follow the plan:** Make decisions based on the plan.

Check and adjust: It is important to check if the plan is working. If new opportunities come up or new information is obtained, the plan can be reviewed and changed.

Who can help with land use planning?

- **Planning professionals:** Experts in land use planning can guide you through land use planning.
- **Property and environment professionals:** Technical experts like environmental, engineering and agricultural professionals can contribute important information by providing specialised advice about land uses suited to the areas you are assessing.
- **Economic, commercial and tax advisers:** These experts may be of assistance at the land use planning phase and definitely later when preparing a business plan (see Section 2).
- **Legal assistance:** Lawyers may help you understand how any land use could be structured from a land tenure, land holding entity and governance perspective. This advice is essential for preparing a business plan (see Section 2).
- **State and local governments:** State agencies, such as DPIRD, the Department of Water and Environmental Regulation (DWER), DPLH and local government planners can guide you through zoning laws, regulations and the approval process for different land uses.
- **Universities and research bodies:** These groups can provide research and expertise in areas such as sustainable development, environmental management and community planning.
- **Non-government organisations (NGOs):** Many NGOs focus on conservation, cultural heritage, and sustainable land uses, and can offer support and partnerships for projects.

How do I get professional help?

It is worth taking the time to decide who you are going to pay to assist you when putting together a land use plan, due diligence assessment or business plan.

1. Chat to people and organisations you trust as widely as possible for recommendations. They may be able to put you in touch with former clients of the recommended person or organisation so you can see if they were happy with their work. Or ask the service provider for client references or the opportunity to speak to former clients.
2. Get at least three quotations from possible service providers which outline what they will do, for how much and what skills and experience they have.
3. Meet with the preferred provider to have a chat about the project and how they might approach it.

Who else should we talk to?

In addition to talking with members of your organisation and receiving specialist advice, it is also worth talking to other interest holders. An interest holder is a person or organisation that has a legal interest in the land where a project may be proposed. Interest holders may be neighbours or other people who have a stake in the land and its future use. The following may be interest holders.

- **Native title party:** If your organisation is not the corporation that holds native title, it is important to work in collaboration with the native title party. Their consent for Crown land tenure or a change of Crown land tenure will probably be required. They will also be involved in any heritage surveys required for future land development.
- **Mining and resource companies:** If there are mining or resource operations nearby, understanding their future plans for the area will be important and may identify further opportunities or constraints (difficulties, limitations).
- **Pastoralists and farmers:** If land is used for grazing or farming, speak to pastoralists and agricultural operators to identify opportunities for land uses.
- **Utility operators:** Providers of energy, water and telecommunication services often have essential services that cross over land. Involving them ensures that any infrastructure developments or maintenance needs are part of the plan.
- **Infrastructure owners:** Railways, roads and other infrastructure might already exist or be planned in the area. The involvement of owners can provide important information for your planning process.
- **Environmental and conservation groups:** These groups can provide valuable input on how to manage the land to protect ecosystems, support biodiversity and contribute to conservation efforts.
- **Local government and state government agencies:** These agencies play a key role in overseeing zoning laws, permits and regulations. Their involvement ensures the land use plan aligns with legal requirements and broader regional plans.

Tip! Public data and geographical information systems tools

There is an incredible amount of land-related information on publicly available data sets. Check out:

data.wa.gov.au

data.gov.au

These sites offer useful information for land use planning and due diligence, including information on land tenure, mining tenure, zoning, areas of environmental significance, environmental conditions and infrastructure (roads, utilities).

With the assistance of a geographical information systems (GIS) specialist, you can extract information from the data sets and create maps to visualise the land's features and associated opportunities or constraints (difficulties, limitations).

GIS platforms provide a user-friendly interface which allows you to create maps and visualise what is happening on Country. This can assist with making informed decisions about land use and management.

Part 2 - Project feasibility

Preparing a due diligence assessment

When you have identified a project and the land that might be suitable for a particular use, it is important to undertake thorough checks to make sure the land is the right fit, and that you are well informed about the required approvals process and potential constraints (difficulties, limitations) of the land. This is particularly important for projects that require land development.

This is called a due diligence assessment.

Here is a simple guide to get started.

Step 1: Identify other interests in the land

Who else may have interest in the land? At this stage you are only identifying potential interest holders. The following are examples;

- **Mining and petroleum tenement or title holders:** Exploration, miscellaneous and pipeline licences or mining leases may exist on the land. Conditions related to these may be included in any land tenure you apply for.
- **Native title party:** If you are not the corporation that holds native title rights, it is important to work with the native title party whose consent may be required for the grant of land tenure and who may need to be involved in heritage surveys.
  You may also want to check whether there are any registered Aboriginal sites by checking on the Aboriginal Cultural Heritage Inquiry System (ACHIS) maintained by DPLH. Note that the ACHIS does not provide a full list of all places of Aboriginal cultural significance.
- **Other land interest holders:** What is the existing land tenure? The land may include easements or be subject to interests that could affect your planned use.

You can find this information by contacting state agencies such as Landgate, DPLH and the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS), or by using publicly available data (discussed in Section 1).

Identifying the potential interest holders will help you begin establishing positive relationships and help you to identify whether they have any other plans that may affect your proposal.

Step 2: Assess access and services

Is the land accessible and are essential services available? This may be important for any development or future use.

- **Road access:** Is there a public road that leads to the land, or will you need to build a road or secure an easement over other land for access? (See Section 11.)
- **Utilities:** Check if the land has access to water, power and telecommunications.

If not, how hard will it be to get these services connected? Are they needed for the proposed land use?

Step 3: Understand environmental factors

It is important to understand possible environmental constraints (difficulties, limitations including contaminated sites, coastal zones etc.) of the land.

- **Native vegetation:** Are there any important plants, trees or bush that need to be protected? Removing native vegetation may require permits.
- **Water sources:** Check for any rivers, creeks or wetlands on or near the land. These could be protected, and you may need to manage them carefully.
- **Flora and fauna:** Are there any endangered plants or animals that live on the land? If so, this could affect what you can do there.
- **Flooding or bushfire risks:** Check if the land is prone to flooding or in a high bushfire risk area. This will affect how you develop the land.

You may need to look at existing environmental reports, or work with an environmental professional to gather this information.

Step 4: Zoning and legal restrictions

Crown land often has regulations on how it can be used.

- **Check zoning:** Zoning determines whether the land can be used for various purposes. For example, a housing development will not be allowed in a light industrial zone where businesses are located.
- **Check land use planning strategies:** Sometimes land has been identified in state land use strategies for a different use from what it is zoned for. Double check the land uses in state strategic planning documents.
- **Check for existing approvals:** Look into whether there are any existing approvals on the land that could affect your plans.

Local government or a planning professional may be able to assist with identifying zoning, existing land use planning strategies and existing approvals.

Scan here to view the PlanWA website.

Step 5: Mapping opportunities and constraints

A map is a useful visual tool to see what is possible on the land and what challenges you might face.

- **Identify opportunities:** A map will show the areas suitable for your proposed use, such as sections with good road access and flat areas.
- **Identify constraints:** These are the limitations on the land, such as culturally significant areas that need to be protected, flood-prone areas or places with native vegetation that cannot be cleared.

Step 6: Consult stakeholders

After gathering all this information, it is time to talk to the people identified in Step 1. This may help you find any areas of common interest and opportunities to work together.

Engage early with DPLH and local government, and gather as much information as possible. DPLH and local government will each have a role in providing approvals for land-based projects.

Step 7: Write up the report

The report summarises the results of the due diligence assessment.

- **Outline the best uses:** Based on the opportunities and constraints (difficulties, limitations) you have mapped, identify the most suitable and sustainable use for the land. Does your proposed land use align with the best land use?
- **Identify the process and key findings:** Explain the work undertaken, list the interest holders, outcomes of consultations and key findings of searches.
- **Address challenges:** If there are issues like access, services or environmental concerns, include steps to address them.
- **Identify approvals:** Identify and consider whether to apply for any necessary government permits or approvals before moving ahead.

Creating a business plan

After completing a due diligence assessment of Crown land for a proposed land use, and provided there are no major road blocks, the next step is to develop a business plan.

This plan will help you to assess the overall feasibility of the project and understand whether it is realistic, sustainable and beneficial.

A business plan is crucial for making a decision to proceed with the project and how it might be structured. For example, what entity or persons will apply for and hold the land tenure? It will also assist to secure funding, loans and/or support from interest holders.

The key steps for creating a business plan are outlined below.

Step 1: Market research or community need for the proposed land use

A business plan needs to explain the context of the project. This important step assists the organisation that is making the decision to spend resources or get a loan to pursue the project and land tenure. It could also be an important factor when applying to funding bodies and/or DPLH.

If it is a purely economic development project, market research is used to assess demand for the proposed land use as part of the reason for the project.

For projects with social or cultural purposes, the plan will need to explain how the need for the proposed land use was identified and assessed, and how the project will deliver the social or cultural purpose.

In commercial projects, it is very important to understand the demand for the land use, which is relevant to the financial viability of the project. Whether it is for housing, tourism, agriculture or renewable energy, understanding the market is essential.

- **Identify your target market:** Who will use or benefit from the project? Are there enough potential customers or users?
- **Look at competitors:** Are there other similar projects in the region? How will your project stand out or fill a gap?
- **Study industry trends:** Look at the broader trends in the industry (for example, tourism, farming, energy) to understand whether demand is growing or shrinking.

Who can help? For commercial projects, market analysts, industry bodies and economic development agencies, such as DPIRD and regional development commissions, may be able to assist with gathering this information.

Step 2: Cost estimation

It is important to identify and understand all the costs involved in developing a project.

Upfront costs:

- Costs involved with securing land tenure such as the cost of a surveyor to prepare a deposited plan to support the land tenure grant.
- Fees for preparation and lodgement of documents.
- Legal advice costs for negotiating the terms of the land tenure and structuring who will hold the tenure and governance arrangements.
- Land development, infrastructure (roads, utilities) and construction costs.

- **Ongoing costs:** Maintenance, staff, utilities, land holding costs (such as land rates and payable rental fee) or environmental management expenses.
- **Unexpected costs:** It is important to set aside funds for any unforeseen costs that may arise during the project.

Who can help? Quantity surveyors, builders and project managers can provide detailed cost estimates, while financial advisers can help create a budget plan.

A legal adviser can provide an estimate of legal costs, together with advice about how the land tenure may be held and managed and by whom.

Step 3: Revenue projections

For an economic development project, it is important to calculate how much income the project could generate.

- **Revenue/Income:** If you are selling products or services, estimate how much revenue you can expect based on market demand. For example, if the land is being used for renewable energy, income might come from selling energy to the grid.
- **Timeframes:** Estimate how long it will take for the project to start generating revenue and when it might break even.

Who can help? Accountants, financial planners, and economic, commercial and tax advisers can assist with creating accurate revenue projections.

Step 4: Risk assessment

Identifying and managing risks is key to ensuring the project's long-term success. The following are some of the risks.

- **Financial risks:** Changes in market demand, rising costs or difficulty securing funding.
- **Environmental risks:** Flooding, fire hazards, or protected wildlife that could delay or halt the project.
- **Regulatory risks:** Changes in government policies or local government regulations that affect land use.

Once you identify these risks, plan for how they will be managed, such as setting aside contingency funds or obtaining necessary permits before any major commitment to the project.

Who can help? Risk management consultants, environmental consultants and legal advisers can provide guidance on identifying and mitigating risks.

Step 5: Funding and finance

To ensure your project is feasible, you will need to secure funding, which could come from the following sources:

- **Grants:** Government or community grants aimed at supporting Aboriginal economic development, land acquisition and management or business projects.
- **Loans:** Financial institutions that provide loans for business development.
- **Partnerships:** You may partner with other organisations, investors or companies to help fund the project.

Create a financial plan that shows how the project will be funded and how any loans or investments will be repaid over time.

Who can help? Financial advisers, banks and government funding bodies can guide you through the funding process.

Step 6: Cost–benefit analysis

This is where you weigh the costs of the project against the benefits. A strong project will deliver important benefits for the costs.

- **Financial benefits:** Revenue from the project.
- **Cultural benefits:** Protection of areas of cultural significance, opportunities for looking after Country, maintenance of customary laws and practices, collection of bush foods, traditional medicine and hunting, etc.
- **Environmental benefits:** Land conservation, carbon farming or renewable energy.
- **Social benefits:** Employment opportunities, improved community facilities or infrastructure (roads, utilities).

Who can help? Economic consultants, financial advisers and community planners can assist with cost–benefit analysis.

Step 7: Writing up the business plan

The final step is to incorporate all the information into a written business plan.

- **Describe the project:** Outline the proposed use of the land and why it is suitable.
- **Provide financial details:** Include cost estimates, revenue projections and funding sources.
- **Assess risks and benefits:** Outline the risks and how they will be managed, as well as the benefits to the community, culture and environment.
- **Summarise feasibility:** Based on all the information, explain whether the project is feasible and why it should go ahead.

A well-developed business plan is essential for securing funding, gaining approvals and attracting partnerships.

Who can help? For commercial projects, business consultants, financial advisers and economic planners can assist with creating a strong business plan that presents the project in the best possible light. For non-commercial projects, a project manager can assist with putting the business plan together.

Part 3 - State approval and due diligence for grants of tenure

Before making a formal application for Crown land tenure through DPLH, it is highly recommended that you contact the Land Use Management division of DPLH and discuss your proposal with someone from the relevant regional team.

At this stage you should be able to identify the land over which you seek a grant of tenure, but in some cases DPLH may assist in identifying land that may be suitable for a project. Discussions may need to be held about the type of land tenure most suitable for the proposed land use.

The formal application for land tenure begins when you lodge a Crown Land Enquiry Form (CLEF). Once a CLEF is lodged, DPLH will undertake a preliminary assessment on the viability of the proposal. You may be required to produce additional information in support of the proposal. This is where good preparation will assist – you will need to show that your organisation has strong governance and the financial capacity to hold the proposed land tenure. Once the viability of the project is established, DPLH can commence its referral and approval processes.

DPLH, on behalf of the Minister for Lands, needs to do a lot of work in response to a proposed grant or change of Crown land tenure.

Tip!

Before lodging the CLEF, you must have started conversations about the project or proposal with the relevant local government and any primary land interest holder, such as a pastoral leaseholder.

The local government may advise that there are already plans for the land you have selected, or may indicate their support. They may be able to assist with identifying another location that is more suitable.

The time and process required will vary based on the circumstances. In general terms, this work includes:

- Consulting with relevant stakeholders on the proposed grant of tenure, including government agencies such as DBCA, DWER, the Department of Jobs, Tourism, Science and Innovation (JTSI), DPIRD, and the Aboriginal Heritage and Land Use Planning teams at DPLH, and the relevant regional development commission. This is to find out if there are any existing plans or special considerations that may affect your proposal.
- Complying with legislation and statutory processes, such as consulting with local government, seeking the approval of the Minister for Mines and Petroleum (via DEMIRS), who will consult with the various mining tenement holders. In matters related to a pastoral lease, the views or recommendations of the Pastoral Lands Board (PLB) may also be required.
- Identifying other information, approvals or consents that may be required before the grant of tenure or as a condition of the grant of tenure. For example, in relation to a large commercial project, DPLH may require any environmental, planning or development approvals as a pre-condition to the grant of tenure.
- Identifying, drafting and negotiating terms and conditions that may be attached to the proposed grant of tenure.
- Obtaining a valuation from the Valuer-General for the proposed grant of tenure in the case of Crown leases, easements, licences and the grant of freehold tenure.
- Securing surveys (usually at the cost of the applicant) to create a plan to support the grant of tenure, which is a requirement of Crown leases, easements and the grant of freehold tenure.
- Making changes to existing tenure, which may be required before the new grant of tenure can be made, such as cancelling an unmanaged reserve.
- Ensuring compliance with the *Native Title Act 1993* where native title exists, which for grants of land tenure, such as freehold and leasehold, will require the consent of the native title party in a registered ILUA. (For more information go to Section 4).
- Ensuring any state native title compensation liability for the grant of tenure has been resolved before the grant.

DPLH may refuse a grant of tenure where a required approval is not given, or a required consent is not provided, or the land is preferred by the state for another use.

In addition, a grant of tenure may only be possible if you accept certain conditions or some changes to the area of the tenure.

Once a grant of Crown land tenure is made, you may need to return to DPLH in the future to get a further approval from the Minister for Lands. For example, if you wanted to sell your lease or sub-lease to someone else, the Minister for Lands will need to approve it. This is to make sure that any obligations and responsibilities that are part of the grant of land tenure are passed on in full to the new body taking on the benefit of the land tenure.

The *Mining Act 1978*

The Mining Act aims to protect land that is prospective for mining. This means protecting land where there may be an existing or a future interest in mining the minerals from the land. This assessment is based on geological information from DEMIRS and in consultation with existing tenement holders.

Before the Minister for Lands can grant land tenure, the approval of the Minister for Mines and Petroleum is required. DPLH will refer to this as the s16(3) Mining Act approval.

When an application for a mining tenement is made, the Mining Act provides different access rights for mining activities depending on the type and purpose of any existing land tenure on the land.

For example, the Minister for Mines and Petroleum may be required to consult with or obtain the agreement of another Minister before granting a mining tenement.

It is important to understand how the proposed land tenure, if approved by the Minister for Mines and Petroleum, may change access rights under the Mining Act. The land may remain open for such activities or have some restrictions.

Government policy

Government decisions take into account relevant government objectives and policies.

A relevant policy in granting land tenure to Aboriginal communities and organisations is the Aboriginal Empowerment Strategy – Western Australia 2021–2029. This policy sets out the WA government's approach for working with Aboriginal people towards empowerment and better outcomes. WA is also a party to the National Agreement on Closing the Gap, with commitments closely aligned to the Aboriginal Empowerment Strategy.

The WA Aboriginal Empowerment Strategy supports flexible approaches to land tenure that are capable of meeting Aboriginal people's commercial aspirations and cultural priorities.

Scan here to view the
Aboriginal Empowerment Strategy –
Western Australia 2021–2029

Scan here to view the
National Agreement on Closing the Gap

Land holding costs

An important consideration with any grant of Crown land tenure is to understand the associated land holding costs.

Part of this may depend on whether the land tenure will require the payment of a market rental fee or a market purchase price.

The Minister for Lands may exercise discretion to reduce the amount, or grant an interest at a nominal rate. The Minister may exercise the discretion if a strong case or special circumstances are presented.

Special circumstances may include the grant being part of the settling of a native title future act or a compensation claim, an alternative native title settlement, or part of Aboriginal Lands Trust (ALT) divestment.

Where the grant of Crown land tenure aligns with government objectives or policy, such as the Aboriginal Empowerment Strategy – Western Australia 2021–2029, or a commitment such as the National Agreement on Closing the Gap, a submission for a nominal fee that demonstrates a clear social, cultural or economic benefit to Aboriginal people may be favourably considered.

You may be able to get assistance from the Indigenous Land and Sea Corporation (ILSC) – see Section 14.

Other land holding costs include insurance and rates. Check with your local government whether you will be liable for rates. Rates are not payable for land that is the property of the Crown and used or held for public purposes, or land used exclusively for charitable purposes. See cl 6.25 of the *Local Government Act 1995* (WA).

Part 4 – Indigenous Land Use Agreements

What is an Indigenous Land Use Agreement and why is it required?

- Where native title rights and interests exist, or may exist, a new grant of land tenure needs to meet the requirements of the *Native Title Act 1993* (Cth) and its regulations.
- This may require the negotiation and registration of an Indigenous Land Use Agreement (ILUA) with the National Native Title Tribunal (NNTT) to ensure the native title party has consented to the grant of land tenure.
- An ILUA is a voluntary agreement between native title parties and other persons, corporate entities or Government about the use and management of land and waters where native title rights and interests exist. For example, it can be about the grant of land tenure to a corporation.
- An ILUA is likely to be required whether the native title rights and interests are exclusive or non-exclusive.
- Where the grant of tenure is for the benefit of a native title party, an ILUA is still likely to be required.
- This includes grants to the corporation holding the native title rights, known as the Registered Native Title Body Corporate (RNTBC) or the Prescribed Body Corporate (PBC), or to another corporation set up to hold the tenure for the benefit of the native title party.
- An ILUA must be authorised by the native title holders or claimants at a meeting that is properly notified.
- The consent to an ILUA takes effect when the ILUA is registered with the National Native Title Tribunal (NNTT).

Why should the Minister for Lands be a party to the ILUA?

It is preferred that the Minister for Lands is a party to the ILUA for the following reasons:

- Before granting land tenure, the Minister for Lands needs to be assured, that the native title party has consented to the grant. This is the primary purpose of the ILUA.
- The Native Title Act provides that when a grant of tenure affects native title, there is a right of compensation by the native title party.
- Compensation may be payable for the permanent loss of native title rights and interests (also known as the extinguishment of native title rights and interests) or for changes in the exercise of native title rights during the term (life or length) of the land tenure.
- In applications for land tenure, the Minister for Lands needs to be assured that the compensation for the grant of tenure has been worked out between the native title party and the applicant, so there is no future compensation claim for the grant of the land tenure against the Minister for Lands or the state.
- By being a party to the ILUA, the Minister for Lands can ensure that the ILUA provides for the full and final satisfaction of any right of compensation. This means that compensation for the grant of the land tenure has already been worked out and there will not be a future claim.
- By being a party to the ILUA, the Minister for Lands also has an opportunity to consider and approve the proposed grant of land tenure.
- DPLH can undertake the necessary due diligence and approvals before the ILUA is registered. This provides certainty that tenure can be granted once the ILUA is registered.
- By being a party to the ILUA, the Minister for Lands, through DPLH, can implement the ILUA to deliver the grant of tenure as soon as possible.
- DPLH can assist with the drafting of the ILUA or can provide a template (model) ILUA to ensure that the required clauses are included in the ILUA.
- The State must be a party to an ILUA involving the grant of Crown Land where native title is being surrendered, or invalid future acts are being validated.

Tip!

- Meeting all the requirements and registering an ILUA is complex, and legal assistance will be required.
- Engaging with DPLH as early as possible and having the Minister for Lands as a party to an ILUA can save time and legal costs by ensuring that the ILUA does not need to be revised later.

How does the grant of tenure affect native title rights and interests?

- This will depend on many circumstances. You will need legal advice which can be discussed with DPLH. In brief, it will depend on the type of tenure to be granted, and what has been negotiated with the parties to the agreement.
- ILUAs can be used to decide the effect on native title rights and interests. An ILUA can:
  - provide consent to the surrender of native title rights and interests, which will extinguish native rights permanently. This is often a requirement for the grant of unconditional freehold. See Section 10.
  - provide consent to tenure on the basis of the non-extinguishment principle. This means native title rights will not be extinguished but they may be supressed in whole or in part, until the grant of tenure, such as a lease, comes to an end.
- Where an ILUA provides consent for a non-exclusive tenure, such as a diversification lease (see Section 7) or a pastoral lease (see Section 7), non-exclusive native title rights can continue to be exercised, as negotiated in the ILUA.
- Where an ILUA provides consent for a managed reserve or exclusive possession tenure, such as an exclusive possession lease, native title rights and interests can continue to exist, but will be supressed until the lease is terminated. However, the native title rights can resume full effect when the land tenure ends.

Good to know!

The National Native Title Tribunal (NNTT) provides a range of assistance with ILUAs.

For example, the NNTT can assist with the identification of areas where native title rights and interests have been recognised to exist, who holds these rights and whether they are exclusive or non-exclusive.

The NNTT can also produce maps of the agreement area and a description of the agreement area.

The NNTT can also provide a pre-registration check of proposed ILUAs, which is best carried out before a native title party's authorisation meeting and the signing of an ILUA. This ensures that the proposed ILUA is in a registerable form and prevents the parties having to hold another ILUA authorisation meeting if changes need to be made.

Case scenario

A native title party is in negotiations with a renewable energy company for a proposed change of tenure from a pastoral lease to a diversification lease for grazing cattle and a wind farm. The proposed tenure will be held by the renewable energy company, with a sub-lease to the former pastoral lessee.

As part of giving consent to the diversification lease, the native title party negotiates how they will exercise their non-exclusive native title rights. Under the pastoral lease, such rights had to give way to the pastoralist's activities.

Under the new diversification lease, the native title party is able to negotiate no-go areas that are of cultural and social significance where the native title party does not want any grazing to occur or wind turbines to be installed. They also agree to fencing to keep livestock out of the no-go areas, but retain access for the native title party. Commercial benefits are also negotiated.

The change of tenure from a pastoral lease to a diversification lease has given the native title party an opportunity to secure stronger protection of the exercise of their native title rights than they previously had.

Part 5 - Tenure types – snapshot summary

Table 2 provides a snapshot of key differences between different types of Crown land tenure and freehold. Different tenures are used for different purposes and are best suited to different projects. More detailed information is provided in the discussion of each tenure in Sections 6 to 10.

Table 2: Summary of tenure types in Sections 6 to 10 in this guide

Key characteristics ▶ / Tenure type ▼	Able to be transferred	Exclusive right to control access	Unlimited term (life or length)	Able to be used for a broad range of purposes
Managed reserve (Section 6)	✗	✗	✓	✓ Purpose must be in the public interest, not used for purely commercial purposes.
Diversification lease (Section 7)	✓ With approval of the Minister for Lands	✗	✗	✓
Pastoral lease (Section 8)	✓ With approval of the Minister for Lands	✗	✗	✗ Limited to pastoral purposes/permit purpose
Lease for specified purpose (Section 9)	✓ With approval of the Minister for Lands	✓	✗	✓
Lease to advance interests of Aboriginal People (Section 9)	✓ With approval of the Minister for Lands	✓	✓	✓
Freehold (Section 10)	✓	✓	✓	✓
Conditional freehold (Section 10)	✗	✓	✓	✓

Key characteristics ▶ Tenure type ▼	Able to be mortgaged	Able to be leased, sub-leased or licensed	Non-extinguishment of native title	Protection under Mining Act
Managed reserve (Section 6)	✗	✓ With approval of the Minister for Lands	✓	✗
Diversification lease (Section 7)	✓ With approval of the Minister for Lands	✓ With approval of the Minister for Lands	✓ Non-exclusive native title rights/interests can co-exist/ exercised	✗
Pastoral lease (Section 8)	✓ With approval of the Minister for Lands	✓ With approval of the Minister for Lands and PLB	✓ Non-exclusive native title rights/interests can co-exist	✗
Lease for specified purpose (Section 9)	✓ With approval of the Minister for Lands	✓ With approval of the Minister for Lands	✓	✓
Lease to advance interests of Aboriginal People (Section 9)	✓ With approval of the Minister for Lands	✓ With approval of the Minister for Lands	✓	✗
Freehold (Section 10)	✓	✓	✗	✓
Conditional freehold (Section 10)	✓ With approval of the Minister for Lands	✓ With approval of the Minister for Lands	✓	✓

Part 6 - Managed reserve

What is a managed reserve?

- Under the LAA, Crown land can be reserved for a particular purpose which is in the public interest.
- The Minister for Lands can grant a management order over a reserve, which grants the care, control and management of the reserve to a management body.
- A reserve with a management order is a managed reserve.
- The Minister can also grant the management body the power to lease, sub-lease and license parts of the reserve.

Conditions are usually attached to the management order. However, there is no term, rent or yearly fee. The management body is responsible for the upkeep of the reserve.

Good to know!

Reserves with a high conservation or high community value can be classified as Class A, at the discretion of the Minister for Lands.

Class A reserves have a greater degree of protection from mining activities and protection from significant changes to the boundaries of the reserve that reduce the area, change the purpose of the reserve or revoke (cancel) the reserve.

Crown land reserves that come under the CALM Act, such as national parks, conservation parks and Class A nature reserves, also have greater protection. See Section 12 for more information.

What is a reserve purpose in the public interest?

Reserving land for the ‘use and benefit of Aboriginal people’ has long been recognised in the public interest.

More contemporary wording can reserve land for ‘the social, cultural and/or economic benefit of X People’, with the relevant Aboriginal group named. This broader reserve purpose allows many different land uses, including economic development.

However, there may be instances where an Aboriginal organisation does not want the land to be developed for economic benefit and prefers that the land is reserved solely for social, cultural and/or environmental purposes or for a very specific purpose.

Agreement on the reserve purpose will form part of your discussions with DPLH.

Why consider a managed reserve as a land tenure option?

- It can allow a broad range of land uses, provided it is consistent with the reserve purpose. The reserve purpose must always be in the public interest.
- A management order does not grant ownership of land, but it allows for significant control. The name of the management body will be on the Crown land title.
- A management order can include the grant of power to lease, sub-lease and license, which provides added flexibility and can provide a source of revenue. However, the purpose of any lease, sub-lease or licence must be consistent with the reserve purpose and the conditions of the management order.
- Generally, a management order is not granted for a fixed term (life or length) and will continue until it is revoked (cancelled).
- The land holding costs are generally lower than other tenures because there is no purchase or lease fee payable with a managed reserve. This is a significant advantage of managed reserves.

However, the management body may still have costs associated with the reserve, such as holding public liability insurance, managing the risk of bushfire, controlling weeds and feral animals and maintaining existing buildings on the reserve.

Similar conditions will apply if the land tenure is a Crown lease or conditional freehold.

Good to know!

There are certain land uses where a lease may be more appropriate than a managed reserve. For example, commercial activities may require a bank loan. A managed reserve cannot be mortgaged as security for a bank loan. Horticulture, agriculture and residential developments are likely to be better suited to a lease.

If you hold a reserve with a management order, it may be an option to reduce the reserve area or excise (cut out/sub-divide) part of the reserve and convert this to a lease.

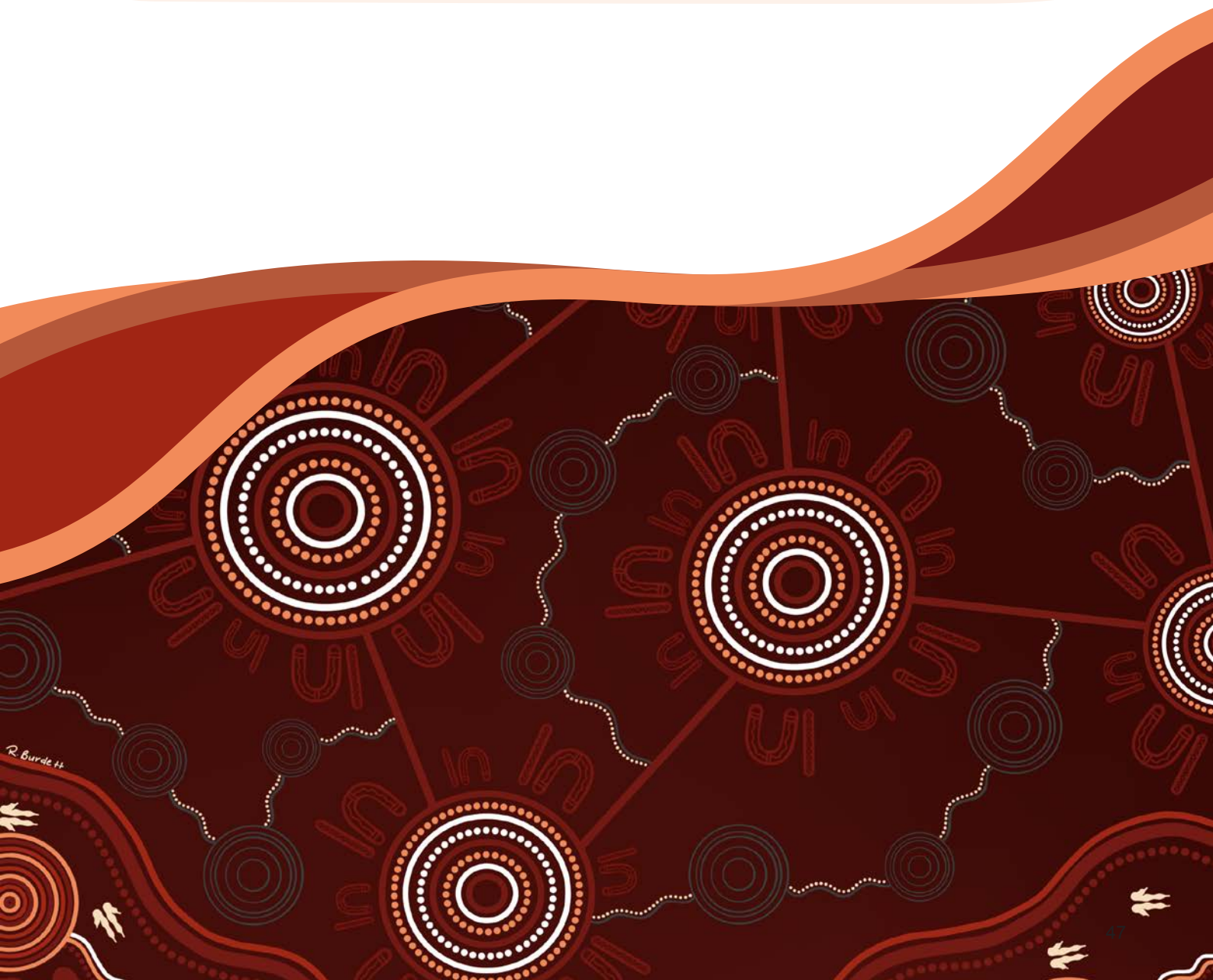
This change of tenure will be treated as a new request for land tenure and the DPLH referral, approval and consent processes will apply. If an ILUA was previously required for the managed reserve and the non-extinguishment principle applied, it is likely that an additional ILUA will be required for the new request.

What else should I know?

- Exercising the power to lease, sub-lease and license will require the Minister's approval, which is the same as for any Crown lease or conditional freehold.
- The management order may permit the grant of leases but impose limits on the length of the leases. Generally, there is a limit of 21 years for a lease, with a right to grant a second term (life or length) of up to 21 years.
- The management order can be revoked (cancelled) if the management conditions are breached. A similar condition will apply to any Crown lease or conditional freehold.
- A management order can also be revoked (cancelled) by the Minister for Lands if it is in the public interest, and/or the reserve area is reduced if the land is required for a public work.
- The management order cannot be sold or transferred to someone else. However, a lease on the reserve may be mortgaged.
- The management order does not include a right to exclude others, except where the reserve is leased.
- Under the *Mining Act 1978*, the Minister for Mines and Petroleum will need to consult with the management body of the reserve before granting any mining tenement. This provides an opportunity to express any objection or perhaps seek conditions to the grant of the tenement. The Minister for Mines and Petroleum will take this into account in their decision but the Minister is not required to follow the wishes of the management body.
- The Minister for Lands will consult with the Minister for Mines and Petroleum on the grant of the proposed managed reserve.
- The Minister for Lands can require the management body to prepare a management plan for the development, management and use of the reserve to be approved by the Minister.
- Whether or not the Minister for Lands requests a management plan, the management body should consider having a management plan for the reserve.
- If native title rights and interests exist, a managed reserve will require consent from the native title party, likely through a registered ILUA. The non-extinguishment of native title rights and interests can apply. See Section 4.

Snapshot summary of considerations for managed reserves in comparison to other tenure

- ✓ Grants care, control and management of land
- ✓ Low land holding costs
- ✓ Able to be used for a broad range of purposes
- ✓ Able to be leased, sub-leased or licensed (with Minister's consent)
- ✓ Unlimited term (life or length)
- ✖ Cannot be transferred or sold
- ✖ No exclusive right to control access
- ✖ Cannot be mortgaged
- ▲ Following consultation with the management body, can be accessible for mining activities.
- ▲ Accessible for mining activities, with the right to be consulted before grant is made.
- ▲ ILUA likely required if native title exists, but non-extinguishment principle will apply.



The following case study demonstrates how a native title party used negotiations for a change of tenure by the pastoral lessee to secure stronger land tenure for the native title party and create a source of long-term revenue and economic development opportunities for its people.

Case study: El Questro Wilinggin ILUA

This case study is about the return of 165,000 ha of land to Ngarinyin People through the surrender of a pastoral lease, in return for securing the business of a tourism operator through the provision of secure and fit-for-purpose land tenure.

The Granites Aboriginal Statue, 7kms north of Mount Magnet. Credit - Badimia Land Aboriginal Corporation

The El Questro retreat was located on the El Questro Station pastoral lease within the Wanjina-Wunggur Wilinggin Native Title determination area in a spectacular part of the East Kimberley. The retreat had operated for some time on the pastoral lease, with a tourism licence issued to cover the tourism infrastructure.

G'day Group became the new owners of El Questro Station and the retreat in 2021, with a view to continuing to use the land primarily for tourism, rather than run it as a cattle station. G'day Group also wished to invest in the tourism infrastructure at El Questro and required more secure and appropriate tenure to support this investment.

G'day Group respected Ngarinyin People as the Traditional Owners of the land and understood that Ngarinyin People and Wilinggin Aboriginal Corporation's consent would be required for any change in the land tenure because of the Wanjina-Wunggurr Wilinggin Native Title determination and the recognition of native title rights and interests. An agreement would only be possible if a change of tenure also brought meaningful and lasting benefits to Ngarinyin People. The parties began negotiations. Wilinggin Aboriginal Corporation proposed a variation of a land tenure model they had developed with the state as a solution to G'day Group's land tenure issues.

The change of tenure would require consideration by the PLB and decisions by the Minister of Lands to grant the new tenure. Such decisions need to be consistent with existing state policies, and all relevant approvals need to be secured. DPLH brought additional ideas about possible tenure arrangements and facilitated the required approvals and ILUA negotiations. Through negotiations between the parties, the following agreements were reached.

- The Minister for Lands would be a party to the ILUA, which would also incorporate the Minister's agreement for the replacement tenure. Having the Minister for Lands as a party to an ILUA provides increased certainty for the native title holders and project proponents that tenure outcomes will be achieved. This also helped a faster implementation of the new tenure arrangements as soon as the ILUA was registered.
- The Minister for Lands agreed to grant conditional freehold to Wilinggin Aboriginal Corporation over approximately 2,600 ha. The grant of conditional freehold would not extinguish native title rights and interests.
- Wilinggin Aboriginal Corporation would lease the conditional freehold land back to G'day Group for 99 years, providing a long-term income stream for Ngarinyin People. Long-term leasing was a key requirement of G'day Group to surrender its existing interests in the land and ensure the security of tenure it needed for its tourism operation. The long-term lease G'Day Group wanted was better supported by freehold title than over a reserve.
- The Minister for Lands agreed to create a reserve over the balance of the former pastoral lease on Ngarinyin Country which has an area of approximately 163,000 ha. The reserve would be created for the purpose of tourism, accommodation, pastoral activities, carbon farming, land management and any related or ancillary uses, with the grant of a management order to Wilinggin Aboriginal Corporation. This gives the land holding entity responsibility to care for, control and manage the reserve, and the power to lease and license the reserve for uses which are consistent with the reserve purpose. The creation of the reserve and the grant of a management order would not extinguish native title rights and interests. Ngarinyin People, through their land holding entity, are recognised as the management body of the reserve.
- Wilinggin Aboriginal Corporation would issue licences to G'Day Group over the key tourism areas of El Questro Station for ongoing use of the reserve for tourism purposes.

Credit - Badimia Land Aboriginal Corporation

The surrender of the pastoral lease has opened up Country to Wilinggin Aboriginal Corporation and Ngarinyin People, who are now in a stronger position to protect and manage this part of their Traditional Country. Rather than being managed as a pastoral lease, El Questro will be managed for its environmental and cultural values by Wilinggin Aboriginal Corporation and the Wunggurr Aboriginal Rangers. Wilinggin Aboriginal Corporation also intends to register a carbon project over the balance of the station.

Beyond the tenure changes and the income stream from the lease, the agreement has brought scholarships, training and employment opportunities in tourism, hospitality and land management. Ngarinyin People now lead cultural tourism activities, supported by G'Day Group. El Questro is also working with the Wilinggin Aboriginal Corporation to become carbon neutral by purchasing carbon credits generated by its Wilinggin Fire Project, which uses traditional and modern land management techniques to reduce carbon emissions by avoiding large bush fires.

These outcomes would not have been possible without a respectful relationship between G'day Group and Ngarinyin People, and both parties having a genuine desire to work together to achieve a good outcome for all. Early engagement with DPLH and inclusion of the Minister for Lands as a party to the ILUA was also critical to providing certainty of tenure outcomes, while allowing the parties to work collaboratively to develop an innovative approach to land tenure. This approach is consistent with WA's Aboriginal Empowerment Strategy and commitment to the National Agreement on Closing the Gap.

Part 7 - Diversification leases

What is a diversification lease?

- A diversification lease is a new type of Crown land tenure that was introduced in 2023.
- It can be used for a single land use or multiple land uses that can co-exist.
- Diversification leases are intended to be granted over large areas of Crown land to:
  - assist pastoral lease holders who want to diversify land uses beyond what is permitted under a pastoral lease or diversification permits;
  - provide a suitable tenure for uses of Crown land not suitable for pastoral purposes:
  - assist in development of the renewable energy industry in WA to meet the WA government's plan for net zero emissions by 2050.
- Diversification leases can permit a broad range of possible land uses compared to pastoral leases, which require the land to be used primarily for pastoral purposes, with limited rights to pursue other activities through pastoral permits. See Section 8 for more information on pastoral leases.

Good to know!

A diversification lease cannot exist over a pastoral lease. It is very different from a pastoral permit, which can exist with a pastoral lease.

If a diversification lease is proposed over the whole or part of a pastoral lease, the holder of the pastoral lease will need to give their consent to surrender all or part of the pastoral lease.

The applicant of the diversification lease is required to negotiate with the pastoral lessee for this consent to surrender.

If partial surrender of a pastoral lease is proposed, the Minister for Lands will seek the advice of the PLB on the economic viability and ecological sustainability of the remainder of the pastoral lease.

Potential land uses under a diversification lease include:

- carbon farming
- agriculture
- environmental conservation
- renewable energy
- multiple uses at the same time, such as grazing livestock, horticulture and tourism
- a range of other economic development and land management uses

Other than permitted multiple land uses, a diversification lease shares many similarities with a pastoral lease.

- It is a non-exclusive lease, meaning the lessee does not have a legal right to exclude all others from the land.
- It is accessible for mining activities but mining tenement holders will be required to obtain consent to gain access to certain protected areas within a diversification lease under the *Mining Act 1978*.
- There are special access and use rights reserved for Aboriginal people to the parts of the lease which are unimproved (not built up or developed) and unenclosed (unfenced).
- Non-exclusive native title rights and interests can co-exist with a diversification lease, and the grant of a diversification lease could be subject to the non-extinguishment principle under the *Native Title Act*.
- The lease terms cannot include an option to purchase the land.
- All diversification lessees will be required to manage and maintain the condition of the soil and vegetation on the land as required by the Minister for Lands and relevant legislation. There will also be conditions to:
  - prevent or minimise the risk of bush fires
  - control certain plants, animals and pests
  - comply with all other laws
- Market rent will apply to all diversification leases and this will be determined by the Valuer-General based on the likely revenue from the proposed permitted diversification lease uses.
- The lease can be forfeited (cancelled) if there is a breach of the conditions by the leaseholder, as with all Crown leases.

Good to know!

If an ILUA authorises a lease and the lease is to be varied to include additional uses, DPLH will also check that the ILUA covers the variation. If not, an additional ILUA may be required for the additional land uses.

As a native title holder, what else should I know?

Where native title rights and interests exist, the grant of a diversification lease over Crown land will likely require negotiation with the native title party to obtain their consent to the diversification lease in a registered ILUA.

This puts the native title party in a strong negotiation position with a person who wants a diversification lease.

The native title party can negotiate how they will exercise their non-exclusive native title rights, as well as what meaningful and sustainable benefits may exist for the native title party under the new tenure.

As the holder of a pastoral lease or the management body of a reserve, what else should I know?

If a diversification lease is proposed over the whole or part of a pastoral lease or a managed reserve, this can only occur with the consent of the pastoral lessee or the management body.

The pastoral lessee will need to surrender part or the whole of the pastoral lease.
The management body will need to revoke (cancel) the management order.

This puts the pastoral lessee and the management body in a strong position to negotiate meaningful and sustainable benefits in return for the change in tenure.

What is required to apply for a diversification lease?

The applicant needs to show:

- the proposed land use or uses will provide social, economic or environmental benefits to the locality, the region or the state;
- if possible, that the grant will provide social, cultural and economic opportunities for Aboriginal people and communities;
- the land is appropriate for the proposed land uses;
- how environmental values will be protected, rehabilitated or offset;
- how the proposal aligns with WA government objectives or policy;
- an estimated project timeline, investment and cost modelling to support the proposal;
- the applicant has or will have the capability, capacity and experience to deliver the intended outcome.

The amount of information required will vary depending on the proposed land use, its intensity, significance and the investment required.

The Minister for Lands may assess the financial and management capacity of the applicant to commence the project and set conditions as to when a project must commence.

As discussed in Section 3, grants of leases require the approval of the Minister for Mines and Petroleum.

In the case of diversification leases, the approval of the Minister for Mines and Petroleum includes approval of the location of any substantial structures. This will require the application to include advanced site plans that identify the location of substantial structures, such as wind turbines, whose approved location will be included on a sketch of the lease area attached to the lease.

There will be buffers around approved substantial structures, which prohibit mineral exploration and mining activities within the buffer areas without the consent of the lease holder.

Any later changes or additions to the location of substantial structures, or a new land use for the diversification lease, will require a further approval from the Minister for Lands and the Minister for Mines and Petroleum.

Scan to learn more about diversification lease proposals.

Case scenario - Diversification lease

A proponent seeks to negotiate an ILUA with a native title party that holds exclusive possession native title rights over unallocated Crown land for the generation and transmission of renewable energy under a diversification lease. As a result of negotiations:

- Certain areas that the proponent wanted to develop are now excluded to protect their cultural value. Parties have agreed on a Heritage Protection Agreement.
- The parties have negotiated a sub-lease to the native title party, at nominal rent, to enable the native title party to undertake cultural tourism, land management and Aboriginal economic development. These additional land uses are included in the head lease and the Minister for Lands has pre-approved the sub-lease.
- The native title party has secured contracting opportunities during construction and for ongoing land management responsibilities.

If the proponent wants to carry out additional land uses, they will need to obtain additional approvals, including from the native title party by negotiating an additional ILUA.

Snapshot summary of diversification leases

- ✓ Able to be used for a broad range of purposes;
- ✓ Able to be sub-leased or licensed (with approval of the Minister for Lands);
- ✓ Able to be mortgaged (with approval of the Minister for Lands);
- ✓ Able to be transferred (with approval of the Minister for Lands);
- ✓ Non-exclusive native title rights can co-exist, to be exercised on the terms negotiated in the ILUA.
- ▲ Accessible for mining activities, with protection for some facilities, including pre-approved substantial structures;
- ▲ Subject to a market lease fee;
- ▲ Subject to a fixed term (life or length) appropriate for the land uses;
- ▲ ILUA likely required if native title exists, but the non-extinguishment of native title will apply.
- ! Requires early engagement with DEMIRS and advanced site design so DEMIRS can approve land uses; in particular the location of, and areas around, substantial structures.

Part 8 - Pastoral leases

What is a pastoral lease?

- A pastoral lease permits land to be used for pastoral purposes.
- A pastoral lease is non-exclusive tenure – the lessee does not have a right to exclude all others from the lease area. The lease provides the right for Aboriginal people to access parts of the lease which are unimproved (not built up or developed) and unenclosed (unfenced).
- The pastoral lease can co-exist with rights granted under the *Mining Act 1978* or the *Petroleum and Geothermal Energy Resources Act 1967* and remains accessible for such activities.

Mining tenement holders will be required to obtain consent to access certain protected areas within pastoral leases under the *Mining Act 1978*.

- The grant of a new pastoral lease will require the approval of the Minister for Mines and Petroleum.
- Non-exclusive native title rights and interests can co-exist with a pastoral lease. Where pastoral lease rights and native title rights conflict, the pastoral lease rights prevail.
- The lease terms cannot include an option to purchase the land.
- Pastoral purposes are the commercial grazing of authorised livestock, and agricultural, horticultural and other supplementary uses that are inseparable from, essential to, or normally carried out with, or in support of, the commercial grazing of authorised stock.
- Additional activities may be allowed through the grant of permits. Only a pastoral lessee can apply for and hold a permit. Permits may be granted to:
  - clear trees or vegetation;
  - grow non-indigenous pastures;
  - carry out non-pastoral agricultural activity reasonably related to the pastoral use of the land;
  - conduct pastoral-based tourism;
  - carry out any non-pastoral purposes where land has been enclosed or improved;
  - keep or sell unauthorised stock.
- Activities such as some forms of carbon farming and conservation activities may be consistent with the pastoral purposes.
- For more information on activities for pastoral purposes, check the Pastoral Purposes Framework (Scan the QR code on page 59 to learn more).
- There is a rental fee for pastoral leases, as well as additional rent for permits.
- The PLB is a statutory authority that has a range of statutory functions in relation to pastoral leases.

In the administration of pastoral leases, some decisions are solely the decision of the Minister for Lands, while some require advice from the PLB (such as decisions regarding a new pastoral lease, the subdivision of a pastoral lease, changes to boundaries of pastoral leases or pastoral lease amalgamations).

- The PLB can direct a pastoral lessee to prepare a management plan for the pastoral lease, and address breaches of conditions of the pastoral lease or a statutory obligation.

  The lease can be forfeited (cancelled) if there is a breach of the conditions of the lease or breach of a statutory obligation.

What else should I know?

- Pastoral leases are an important form of Crown land tenure, and cover approximately one-third of WA.
- There are 55 Aboriginal-owned pastoral stations, representing around 13% of existing pastoral stations in WA.
- If a new pastoral lease is to be granted and native title rights and interests exist, the consent of the native title party will likely be required through a registered ILUA, which provides an opportunity to negotiate how native title rights and interests are to be exercised.
- If exclusive native title rights and interests exist, the grant of a pastoral lease will only permit the exercise of non-exclusive native title rights and interests. However, by applying the non-extinguishment principle, exclusive native title rights and interest can have full effect when the pastoral lease ends.

Snapshot summary of pastoral leases

- ✓ Limited to pastoral purposes and related activities or as permitted through permits.
- ✓ Able to be sub-leased or sub-divided (with PLB and Ministerial consent).
- ✓ Able to be mortgaged (with approval of the Minister for Lands).
- ✓ Able to be transferred (with approval of the Minister for Lands).
- ✓ Non-exclusive native title rights can co-exist, but pastoral lessee's rights prevail.
- ▲ Permits must be held by the pastoral lessee.
- ▲ Accessible for mining activities with protection for some structures.
- ▲ Subject to a market lease rent.
- ▲ Subject to a fixed term (life or length) no longer than 50 years.
- ▲ ILUA required for the grant of new pastoral lease tenure if native title exists.
- ▲ ILUA may also be required for the grant of certain pastoral permits if native title exists.

Scan to learn more about the Pastoral Purposes Framework.

This case study is the story of long-term plans to manage important Country in a way that looks after cultural and environmental values, and produces a sustainable economic future for Yawuru People.

Case Study: Gumaranganyjal on Yawuru Country

Gumaranganyjal, also known as Roebuck Plains Station, is an important part of Yawuru Traditional Country. In 1999, before any native title determination, there was an opportunity to purchase the pastoral lease. At the time Yawuru were busy with their native title claim and not yet ready to purchase or run the pastoral lease. Fortunately, the ILSC was able to purchase it on behalf of Yawuru People and run the cattle operation.

Fifteen years later, in 2014, having resolved their native title determination and compensation settlement with the state, and having native title governance and organisational structures in place, Yawuru were building capacity to implement their long-term goals. They secured the resources to organise the transition in ownership of Gumaranganyjal. This required establishing an appropriate corporation to hold the pastoral lease and developing the governance structure for the corporation. Working closely with the ILSC, once all this was in place, the ownership of the pastoral lease was divested (changed) from the ILSC to Yawuru after receiving the consent of the Minister for Lands. By agreement, the ILSC continued with the day-to-day management of the cattle operation until Yawuru felt ready to manage it themselves.

Yawuru's vision for Gumaranganyjal is to run a sustainable cattle operation that integrates Yawuru cultural, environmental, economic and social values, and creates prosperity for future generations.

Consistent with this vision, in 2016 Yawuru applied for an Indigenous Protected Area (IPA) that included areas of cultural and ecological significance on the pastoral lease. This was a first for IPAs! It required that future plans for cattle production are balanced with environmental values.

Gumarangayjal cattle operation, Rock Plains Station. Credit - Yawuru Aborginal Corporation

Gumarangayjal cattle operation, Rock Plains Station. Credit - Yawuru Aborginal Corporation

In 2022 Yawuru were ready to take on operations at Gumaranganyjal. Again this was related to Yawuru having built the capacity and capability to take on the responsibility; that is, having the staff with the right skills to manage the station and having the confidence that they could manage the station and maintain its financial viability.

Ahead of this, Yawuru had started a multi-objective land use assessment to protect culturally important areas and better understand which parts of Gumaranganyjal were best suited for different activities.

The 6-year study included heritage surveys, environmental assessments, soil profiles and a water study that incorporated traditional knowledge with science. Studies also looked at different methods to encourage sustainable grazing, the use of fire management to keep Country healthy and to reduce the risk of large bushfires. There are also plans to become carbon neutral.

The land use assessment identified an area of 420 ha within the station as suitable for irrigated agriculture. This will diversify the income from Gumaranganyjal and open up new economic opportunities for Yawuru. Yawuru have also secured a clearing permit for the area and a 3-gigalitre water licence. Yawuru are working with DPLH and the Yawuru Native Title Holders Aboriginal Corporation RNTBC to excise (cut out/sub-divide) the 420 ha from the pastoral lease and transition to a conditional freehold title.

Once the transition to freehold title is complete, Yawuru will look for a joint-venture partner to develop the irrigated agriculture opportunity, with Yawuru offering land that is project ready.

The Yawuru journey has been supported by the ILSC, in partnership with DPIRD and DWER, which provided funding for consultants in farm management and business skills. Developing relationships with peak industry organisations, universities and the Minister for Agriculture has also played an important part. The work of the Yawuru Country Managers, funded by state and Commonwealth ranger programs, has been pivotal in demonstrating the environmental values of the land and protecting Country.

Yawuru are now developing a diversification master plan, which may require further tenure changes in the future. Together with a successful onsite Indigenous youth employment program, the future looks bright in achieving the Yawuru vision for Gumaranganyjal.

Part 9 - Exclusive possession leases

Diversification leases and pastoral leases are called non-exclusive leases because they do not provide a right to exclude all others. See Sections 7 and 8 respectively.

In contrast, exclusive possession leases do provide a right to exclude all others. Native title rights and interests cannot co-exist with an exclusive possession lease, even if the purpose of the lease is to advance the interests of Aboriginal people.

For this reason, where native title exists or may exist, the grant of an exclusive possession lease will require consent via an ILUA. If the non-extinguishment principle applies in the ILUA, the native title rights will be suppressed until the lease ends. After termination of the lease, native title rights and interests will have full effect.

This section discusses three types of exclusive possession leases:

1. specified purpose lease
2. advancement of interests of Aboriginal people
3. conditional purchase lease

1. Lease for a specified purpose

- Under the LAA, the Minister for Lands can grant an exclusive possession lease, which must specify the permitted use. It could specify more than one use.
- This form of tenure is primarily used for commercial purposes, or as an alternative to freehold tenure, where the state wants to retain the land as Crown land in the long term.
- Land uses proposed under a diversification lease that are intensive and do not permit another land use are better suited to this type of lease. For example, a solar farm, which will need to be fenced for safety reasons, will be more suited to an exclusive possession lease.
- The standard term (life or length) of a lease is up to 21 years, with a right to renew for up to a further 21 years. However, longer terms may be considered by the Minister for Lands depending on the proposed land use.
- An exclusive possession lease (excluding a lease granted to advance Aboriginal interest, discussed below) is protected from mining activities. The approval of the Minister for Mines and Petroleum is required for the grant of this lease.
- This lease can be transferred, sub-leased, licensed and mortgaged with the approval of the Minister for Lands.
- A rental fee will apply. The Valuer-General will provide a valuation of the rental fee.
- The lease can be forfeited (cancelled) if there is a breach of the conditions of the lease.

Snapshot summary of lease for a specified purpose

- ✓ Right of exclusive possession
- ✓ Granted for a specified term (life or length)
- ✓ Available for a range of land uses, but can only be used for the specified use
- ✓ Able to be sub-leased or licensed (with approval of the Minister for Lands)
- ✓ Able to be mortgaged (with approval of the Minister for Lands)
- ✓ Able to be sold or transferred (with approval of the Minister for Lands)
- ✓ Stronger protection from mining activities
- ✖ High land holding costs – market value of leasehold title expected
- ▲ ILUA required if native title exists
- ▲ Limited access for mining activities; consent of leaseholder may be required

2. Lease to advance interests of Aboriginal people

- Under the LAA, the Minister for Lands can grant a lease to advance Aboriginal interests.
- These leases provide a right of exclusive possession.
- Features of this type of lease:
  - It must be held in trust for Aboriginal people. Although it can be transferred or mortgaged (with the approval of the Minister), it will need to continue to be held in trust for Aboriginal people, which will limit the ability to exercise those rights.
  - It can be granted for a fixed term (life or length) or in perpetuity (forever).
- Unlike freehold and other exclusive possession leasehold types, this type of tenure is open to mining activities. The approval of the Minister for Mines and Petroleum is required for the grant of this lease.
- The Valuer-General will provide a valuation of the rental fee. However, as it is a lease granted to advance Aboriginal interests, the Minister for Lands may exercise their discretion and consider granting it for a nominal or discounted rent.
- The lease can be forfeited (cancelled) if there is a breach of the conditions of the lease.

Snapshot summary of lease to advance the interest of Aboriginal people

- ✓ Right of exclusive possession
- ✓ To be held in trust for Aboriginal people
- ✓ Granted for specified or unlimited term (life or length)
- ✓ Can be used for broad land uses
- ✓ Able to be sub-leased or licensed (with approval of the Minister for Lands)
- ✓ Able to be mortgaged (with approval of the Minister for Lands)
- ✓ Able to be transferred (with approval of the Minister for Lands)
- ✓ May be granted for nominal or discounted fee at the Minister for Land's discretion
- ✖ Accessible for mining activities
- ▲ ILUA required if native title exists

3. Conditional purchase lease

This is like the lease described under the heading, Lease for a Specified Purpose, except that the lease can be converted to a freehold title when certain conditions are met and for a purchase fee.

A condition to purchase the land cannot be included in a diversification or pastoral lease.

The conditions usually relate to achieving certain milestones in the development of the land. For example, the lease for a school may convert to a freehold title once the school is built. Other conditions may be included.

This type of lease can be a good option if, for example, the long-term goal is to own the freehold title, but the finances to purchase the land are not yet available.

The purchase fee may be agreed in the lease agreement and rental payments can be considered part payment towards the purchase fee. Or the purchase fee can be decided later.

All the usual approvals and consents for the grant of freehold title would be required – either upfront or as a condition before the transfer of the freehold can occur.

The Valuer-General would provide a valuation of the purchase fee.

Snapshot summary of conditional purchase lease

- ✓ Right of exclusive possession
- ✓ Granted for a specified term (life or length)
- ✓ Can be used for broad land uses, but only used for the specified use
- ✓ Able to be sub-leased or licensed (with approval of the Minister for Lands)
- ✓ Able to be mortgaged (with approval of the Minister for Lands)
- ✓ Able to be transferred (with approval of the Minister for Lands)
- ✓ Stronger protection from mining activities
- ✓ Can be converted to freehold title:
  - once conditions are met and purchase fee paid
  - once converted to freehold
  - no longer limited to specified use
- ✓ Approval of the Minister for Lands is no longer required for sale, transfer, mortgage, lease, licence etc.
- ✓ Maintains strong protection from mining interests
- ✗ High land holding costs – market value of leasehold and freehold title expected
- ▲ ILUA required if native title exists for grant of a lease with option to convert to freehold
- ▲ Limited access for mining activities; consent of leaseholder or freehold title holder may be required

Option to lease

If you are not ready to apply for an exclusive possession lease but want to secure Crown land you have identified as suitable for a future land use, it may be possible to obtain an option to lease under the LAA.

An option to lease is not a type of land tenure; it is a contractual agreement with the Minister for Lands that they will grant you a lease over land in the future if certain conditions are met within an agreed timeframe. This is helpful as it may help you to secure land while you undertake further investigations that may be required for the project, such as any approvals, consents or finances.

Options to lease are granted for a short term, usually up to five years.

When negotiating an option to lease:

- Letters of in-principle support from the native title party and any primary land tenure holder may be required before the grant of an option to lease.
- The terms of the lease are also negotiated and agreed.
- There will be a yearly fee for an option to lease. The Valuer-General will provide an estimated lease fee and option to lease fee.
- DPLH may incorporate some approvals into the option to lease that must be obtained before they will grant lease tenure. These types of conditions are called conditions precedent.

The following are typical examples of conditions precedent.

- Should the land be subject to native title rights and interests, you must secure the native title party's consent for the proposed grant of lease, which is likely to result in the need for an ILUA.
- The Minister for Mines and Petroleum has approved the grant of the proposed lease.
- There is agreement to surrender an existing land interest, such as a pastoral lease.
- Environmental or other approvals have been obtained for the proposed land use.
- Detailed information about the technical and financial viability is provided, to the satisfaction of the Minister for Lands.

Figure 2 shows how an option to lease could act as a first step to the granting of exclusive possession tenure.

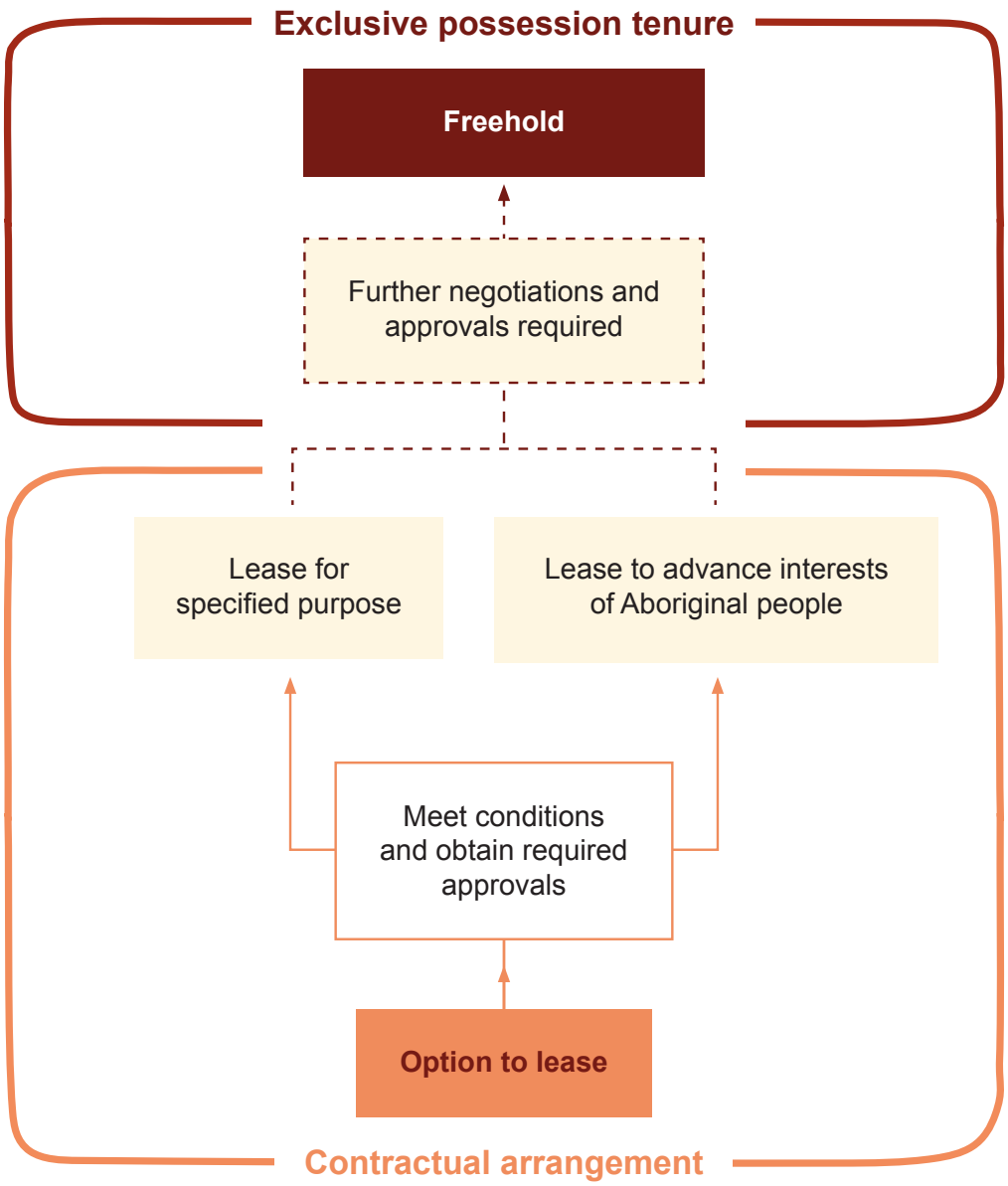


Figure 2: Potential pathway from option to lease to exclusive possession tenure

Snapshot summary of option to lease

- ✓ Agreement for future grant of lease when conditions are met within agreed timeframe
- × Not a type of land tenure – contractual interest only
- × Option to lease fee is payable
- × Grant of lease will be subject to approval of the Minister for Mines and Petroleum when lease is requested.
- + ILUA not required for option to lease, but if native title exists, it will be a condition for the grant of lease.

Part 10 - Freehold

What is freehold?

- Freehold title is the highest form of land ownership and has no time limit.
- The owner of freehold can sell, transfer or lease the land without any further approval. The land can be used as security for a loan; it can be mortgaged.
- Land uses are not specified on freehold title, although planning laws and other requirements for approvals and permits will apply and limit potential land uses.
- The Minister for Lands has discretion to grant a freehold title over Crown land (so that it will no longer be Crown land), subject to certain conditions:
  - The approval of the Minister for Mines and Petroleum. Greater restrictions on mining activities will apply and the freehold owner's consent may be required.
  - The Minister for Lands must be satisfied there is no other reason for keeping the land as Crown land. For example, because the land has a high conservation or community value, or is to be retained for a state strategic purpose.
  - If native title exists or may exist over the Crown land, the grant of freehold will require that native title consent is provided through a registered ILUA (see Section 4).

Native title rights and interests cannot co-exist with freehold title because it is a form of exclusive tenure.

Generally, the grant of freehold will extinguish native title rights and interests forever.

A grant of freehold will require the applicant to pay to the state the freehold market value of the land. The Valuer-General will provide a valuation of the land.

Snapshot summary of freehold

- ✓ Right of exclusive possession
- ✓ Granted for unlimited term (life or length)
- ✓ Can be used for broad land uses
- ✓ Able to be leased, sub-leased or licensed
- ✓ Able to be mortgaged
- ✓ Able to be sold or transferred
- ✓ Stronger protection from mining activities
- ✖ Cannot co-exist with native title rights and interests; they generally need to be extinguished.
- ✖ High land holding costs – market value of freehold title expected.
- ▲ ILUA required if native title exists
- ▲ Limited access for mining activities; consent from the freehold title holder may be required.

Conditional freehold

- Conditional freehold is a grant of freehold with conditions that limit it to a specified use, but without any time limit. The conditions will be registered on the title.
- It cannot be sold.
- It cannot be sub-divided (converted into smaller lots).
- It can be leased, licensed and mortgaged, but only with the approval of the Minister for Lands.
- It is usually granted for a community rather than a commercial purpose. For example, to be used as a community centre.
- It is often granted for a nominal fee or a discounted price. If the conditions are later lifted so that there are no conditions, the owner may be expected to pay the state the market price minus any discounted price already paid.
- Conditional freehold can be forfeited (cancelled) if any conditions are breached or the land is not used for the specified use.
- The same referral and approval process applies as for freehold tenure.
- Native title rights and interests cannot co-exist with freehold title because it is a form of exclusive tenure.

Snapshot summary of conditional freehold

- ✓ Right of exclusive possession
- ✓ Granted for unlimited term (life or length)
- ✓ Limited to specified use, usually community benefit
- ✓ Able to be leased, sub-leased or licensed (with Minister's approval)
- ✓ Able to be mortgaged (with Minister's approval)
- ✗ Cannot be sold or transferred
- ▲ ILUA required if native title exists; may permit native title rights to be suppressed rather than extinguished
- ▲ Limited access for mining activities; consent from the freehold title holder may be required

Part 11 - Licences and easements

Licences

What is a licence?

- A licence grants a right to occupy and use Crown land for permitted activities for a specified, short period.
- A licence provides a contractual right but not an interest in land. It does not grant exclusive possession of the land.
- A licence granted under the LAA is not primary land tenure, such as freehold title or a lease interest, and can be granted with the consent of the holder of the primary land tenure.
- A licence granted under the LAA can only be granted over Crown land and not over a freehold title.
- A licence is often granted over Crown land for a short time to investigate whether land is suitable for a project. The licence enables the proponent of the project to undertake feasibility studies. For example:
  - fauna and flora studies to support environmental approvals;
  - geotechnical and hydrology studies to develop the engineering requirements;
  - a site plan to support development approval.

All this information helps to define the area over which tenure will be applied for and ensures all approvals and permits are in place before the tenure is granted.

- A licence can be granted to permit certain activities on Crown land for a short term, such as a sports event or music festival.
- Where native title exists, the native title party will need to provide its written consent to the grant of a licence. An ILUA is generally not required.
- If there are other land interest holders in the land, their consent to the licence is also required. For example, if mining titles or petroleum tenements exist within the licence area, the Minister for Mines and Petroleum will also need to provide their consent.
- There will be a licence fee. The Valuer-General will provide a valuation for a licence fee.
- A licence can be terminated if there is a breach of the conditions attached to it.

Case scenario – Licence

A Prescribed Body Corporate (PBC) seeks a diversification lease over unallocated Crown land (land without any primary interest holder and not reserved for a purpose) for renewable energy, tourism and to sub-lease part of the land for grazing.

DPLH investigated the land parcel and provided advice on diversification leases. DPLH proposed that the PBC apply for an LAA licence first to do some studies for suitability of the proposed land uses.

DPLH obtained the required approvals and comments from any affected interest holders, including DEMIRS, local government and the DPLH Aboriginal Heritage and Land Use Planning divisions. DPLH granted a licence for a term (life or length) of two years, with a licence fee.

This enables the PBC to undertake wind monitoring, geotechnical studies, and soil, fauna and flora surveys to refine the areas that might be best suited for the proposed activities.

Easements

What is an easement?

- An easement grants a right to use a portion of land for a specific purpose.
- Easements are often used to grant an access right or to permit certain service infrastructure on land, such as drainage, pipelines or electrical power lines. It does not grant exclusive possession of the land.
- For example, you may be seeking a lease over a portion of land that has no public access road to it. You may require an easement as an access right over adjoining Crown land to give you access to the lease area.
- The Minister for Lands can grant easements over Crown land, but requires the consent of every interest holder in or over the land. It also requires the consent of the management body of a reserve.
- If native title rights and interests exist, an easement may require the consent of a native title party through a registered ILUA. If the non-extinguishment principle applies and the easement is terminated, the pre-existing native title rights can have full effect.
- If there are any changes in the land tenure of the Crown land over which the easement passes, the easement continues to have full effect. For example, if you had an access easement over a pastoral lease that changed to a diversification lease, the easement continues.
- A one-off or yearly easement fee will be required. The Valuer-General will provide a valuation for the easement fee.

Part 12 - Conservation estate

Additional options for managing land exist under the *Conservation and Land Management Act 1984* (CALM Act), where there is government agreement to create new areas of conservation estate.

The CALM Act applies to:

- Crown land held by the Conservation and Parks Commission (the Commission), and sometimes by a joint responsible body such as an Aboriginal Body Corporate, which is reserved as:
  - national parks
  - conservation parks
  - nature reserves
- State forests and timber reserves
- Marine parks, marine nature reserves and marine management areas
- Certain other areas for conservation purposes
- Land and waters with a section 8A CALM Act Agreement, where by agreement, the CALM chief executive officer agrees to manage private or other lands.

Together, they are called CALM Act lands and waters, or WA's conservation estate.

Good to know!

The CALM Act is administered by the Minister for the Environment, assisted by DBCA. Parks and Wildlife Services, within DBCA, works with Traditional Owners to manage the conservation estate, including joint management.

If you would like to find out more about joint management and joint vesting of conservation estate, contact Parks and Wildlife Services on 9219 9000 or email: enquiries@dbca.wa.gov.au

What are management plans?

- CALM Act lands and waters must have management plans that explain how DBCA will protect the natural values of the land and water for lands held by the commission (and any joint responsible body) or under section 8A agreements.
- Importantly, management plans must also set out how DBCA will protect the Aboriginal cultural and heritage values of the land and water. To do this, DBCA needs to work with the Traditional Owners of the land and waters.
- Before a management plan is finalised, it is made available for public comment.
- Once finalised, the management plan is approved by the Commission, any joint responsible body and the Minister for the Environment.
- When land and waters are jointly vested (explained below) approval of the management plan is also required by the Aboriginal organisation.

What is joint management?

- Joint management is a partnership between Aboriginal organisations representing Traditional Owners and DBCA to plan for and manage the conservation estate together.
- The first step is a joint management agreement that sets out how DBCA and the Traditional Owners will work together.
- The next step is developing a joint management plan that sets out how DBCA and the Traditional Owners will look after Country together.
- Joint management gives Traditional Owners a say about what happens on Country. The management plan can incorporate western science and land management practices and Indigenous knowledge about looking after Country.

Why consider joint management?

Joint management:

- helps protect Aboriginal cultural and heritage values in the WA conservation estate;
- gives Traditional Owners a say in looking after land and waters in the conservation estate;
- creates opportunities for Aboriginal employment. For example, either directly with DBCA or through ranger programs that provide services to DBCA, such as prescribed burning;
- creates other opportunities, such as certified training to develop practical skills, conservation and land management qualifications or to develop cultural-based tourism.

Aboriginal customary activities

- The CALM Act supports Aboriginal customary activities by permitting a range of activities on CALM Act lands and waters for Aboriginal people only.
- Rights to customary activities apply to all CALM Act land and waters, and do not require a joint vesting or a joint management agreement.
- Permitted customary activities include:
  - camping outside marked campsites for up to 28 days
  - lighting campfires or fires for ceremony
  - undertaking ceremonial activities
  - taking ochre or water
  - creating or maintaining rock art and moving natural features
  - hunting and gathering food and medicine
  - entering restricted caves
  - accessing additional areas with vehicles or bringing dogs to additional areas

Where there is a safety risk or an environmentally sensitive area, written permission or a local area arrangement to undertake customary activities may be required from DBCA. Sometimes permission is required from a third person with an interest in the land.

Some customary activities may be restricted in areas close to carparks, sealed roads, designated camping areas, visitor areas, in urban areas or within townsites.

For more information, see the DBCA website or contact the Parks and Wildlife Services office in your region.

What is joint vesting?

- Joint vesting is where the Commission and an Aboriginal organisation representing Traditional Owners are both named as the management body of a reserve in the vesting order.
- Joint vesting gives shared responsibility to care for, control and manage the land and waters. This will be recorded on the title of the reserve.
- Joint vesting can be put in place over national parks, nature reserves and conservation parks, as well as marine parks, marine management areas and marine nature reserves.
- Reserves held by the commission for other purposes can also be issued with a joint management order, which provides similar benefits as joint vesting.

What is the difference between joint vesting and joint management?

Joint management and joint vesting are not the same thing, but they are connected. A joint management agreement is not recorded on the title of the reserve, but is a legal agreement to work together to manage the land or waters.

Where there is joint vesting, a joint management plan will need to be approved by the commission, the Aboriginal organisation and the Minister for the Environment.

Joint vesting recognises the interests of the Traditional Owners on the title, as well as through any management agreement.

Snapshot summary of conservation estate

- ✓ Permits joint vesting and joint management
- ✓ Requires protection of Aboriginal cultural and heritage values
- ✓ Permits customary activities
- ✓ Provides strong protections from mining activity and changes to tenure
- ✖ Reserves cannot be sold or transferred
- ✖ Cannot be mortgaged
- ▲ ILUA required for new reserves, if native title exists. The non-extinguishment principle applies, but there will be some effects on native title rights and interests during the term (life or length) of the conservation estate. For other activities, such as mining and alternative land uses, full future CALM Act requirements still apply.

Good to know!

Reserves created under the LAA can be classified as Class A reserves, which gives additional protection to reserves with high conservation or high community value.

Major amendments to Class A reserves, or to national parks or conservation parks (whether Class A or not), requires the Parliament of Western Australia to consider the change. For example, a Class A reserve is considered by Parliament before its purpose can change or land is removed from the reserve. (This does not apply to minor changes, such as installing public utilities.)

The *Mining Act 1978* has special protections for certain conservation lands and Class A nature reserves. Before the Minister for Mines and Petroleum can grant a mining tenement, consultation with the Minister for the Environment or the management body may be required. In some situations, the consent of the Minister for the Environment is required before a mining tenement can be granted. Where a mining lease is proposed within a national park or certain Class A nature reserves, the consent of both Houses of Parliament is required before the tenement can be granted.

Part 13 - Aboriginal Lands Trust divestment

What is the Aboriginal Lands Trust estate?

- Since 1972 the Aboriginal Affairs Planning Authority (AAPA) and the Aboriginal Lands Trust (ALT) have been holding land for the benefit of Aboriginal people in WA. This is known as the ALT estate.
- The ALT estate holds about 22 million hectares of land, on which there are 143 regional and remote Aboriginal communities with a population of approximately 12,000 people.
- The state, the AAPA and the ALT are working to divest the ALT estate as part of a 2017 state government commitment.
- Divestment is about handing back land held by the AAPA and the ALT to the direct control and management of Aboriginal people and organisations.
- The goal of divestment is to support Aboriginal social, cultural and economic opportunities through land ownership and management.
- The ALT estate is primarily Crown reserves, but also includes freehold parcels and leases, including pastoral leases. Around half of the ALT estate is leased, primarily to Aboriginal organisations.
- The divestment of the ALT estate needs to balance the interests of native title parties, Aboriginal communities, Aboriginal leaseholders and other interest holders.
- Under the requirements of the *Aboriginal Affairs Planning Authority Act 1972* (WA) (AAPA Act), the ALT must consult with all Aboriginal inhabitants before divestment can occur.
- If native title rights and interest exist, native title consent is required through an ILUA for divestment to occur.
- Before divestment, the land must be in good condition. The State will assess the relevant land to determine if an inspection and/or if further investigation and management of any identified risks, such as rubbish and contamination is required prior to divestment.
- The tenure options for ALT divestment are as discussed in this guide.

Part III reserves

One-third of reserves in the ALT estate are Part III reserves. Part III reserves can only be managed by the ALT and have special protections.

What special protections do Part III reserves have?

- Most non-Aboriginal people (except for Members of Parliament and government employees in the performance of their duties) must have a permit to enter. If they do not have a permit to enter, they are committing an offence.
- Parliament must agree to change the boundaries of a Part III reserve or cancel a Part III reserve.
- The Minister for Mines and Petroleum must consult the Minister for Aboriginal Affairs before giving mining companies permission to explore or mine an area.
- To grant any other interest in a Part III reserve (except in relation to mining interests) you need the approval of the AAPA.
- If a Part III reserve is transferred out of the ALT estate, the Part III status must be cancelled – this removes the special protections.

Tip!

- In considering ALT divestment, you will need to consider the loss of the Part III special protections and which tenure option best protects your interests.

What are the steps to ALT divestment?

Figure 3 outlines the steps you will need to take when seeking divestment of ALT land.

STEP 1 Aboriginal person or entity (usually an existing interest holder in the ALT estate) writes to the state asking to divest ALT land to them.

STEP 2 The state meets with the Aboriginal person or entity to discuss the divestment process and options for ownership and use of the land.

STEP 3 The Aboriginal person or entity tells the state what it wants to do with the land and demonstrates that it has strong governance and the financial capacity to own or manage the land.

STEP 4 The ALT consults with all Aboriginal people who have an interest in the land and takes their views into consideration.

STEP 5 Government gives approval for the divestment and tenure change.

STEP 6 The native title parties give their consent to divestment and an ILUA is authorised, signed and registered.

STEP 7 Legal documents are prepared, signed and lodged with Landgate.

STEP 8 Land is legally divested and ownership/management rights and responsibilities pass to Aboriginal person or entity.

Figure 3: Steps to divestment of ALT land

Case Study 1: ALT divestment

The ALT holds a property of 100 ha as a reserve for the use and benefit of Aboriginal people outside a small town. The land is not leased and no-one lives there. The native title party approaches the ALT through DPLH, as the sole interested party, to discuss possible divestment of the property.

Following discussions, DPLH seeks the required approvals to amalgamate (combine) a portion of the surrounding unallocated Crown land, over which the native title party holds exclusive possession native title rights and interests, into the reserve. The purpose of the reserve is changed to the 'social, cultural and/or economic benefit of [native title party] people'.

A management order is granted to a land holding entity of the native title party, which gives power to care for, control and manage the reserve, together with the power to lease, sub-lease and license a portion of the reserve. The native title party authorises the ILUA that provides the formal consent for the proposed changes of tenure. The native title party now has much more control over the land and can progress its plans for the reserve.

Case Study 2: Divestment

The ALT holds conditional freehold over land on which an Aboriginal community of 400 people resides. In the 1980s, an Aboriginal community association was granted a 99-year lease over the freehold. Later, a native title claim is lodged over the land and native title is recognised to exist. Many people who live in this community are not members of the native title party of the area.

Consistent with the requirements of the AAPA Act, the ALT and the Minister for Aboriginal Affairs are required to make decisions on the ALT estate based on consultation with all Aboriginal interest holders. A tenure solution is required which is supported by all Aboriginal interest holders, including the native title party, community members, leaseholders and any other residents.

There are many meetings to understand all the issues. Three options are identified:

1. The native title party holds the conditional freehold and leases the whole area to the community.
2. The community association holds the conditional freehold.
3. The conditional freehold is sub-divided, and a portion is granted to the native title party and the balance is granted to the community association.

In the end it is agreed to sub-divide the area into two lots of conditional freehold. The native title party can regain control over an area of cultural significance that was previously part of the community grounds, and, at the request of the native title party, the ALT agrees to put a fence around this area. The native title party also agrees to increase the area of conditional freehold granted to the community to allow for the future expansion of community housing. This is amalgamated into (combined with) the existing conditional freehold to be held by the community.

With DPLH able to facilitate these processes, the community association can now consider sub-leases to various service providers in the community, such as education, health, police and power. Any sub-lease to third parties will require the consent of the Minister for Lands.

DPLH and the Department of Communities also need to discuss with the community association who will manage community services and whether additional sub-leases may be required for water supply, waste water and waste management.

Part 14 - Indigenous Land and Sea Corporation

The Indigenous Land and Sea Corporation (ILSC) assists member-based Indigenous organisations in urban, regional and remote areas to acquire and manage land to achieve economic, environmental, social and cultural benefits.

ILSC assistance has two key aspects:

1. acquisitions
2. management projects

1. Acquisitions

The ILSC assists Indigenous organisations in the acquisition of land and/or water-related rights by providing purchase funds.

The ILSC can provide partial funding to purchase land or a property, which is of interest to an Indigenous organisation, that becomes available on the market.

The ILSC's preference is that any land or property acquired by the ILSC is immediately granted to Indigenous title holders. Part of the assessment will be that the organisation is ready to take on such responsibilities.

This is a change from the past practice of the ILSC of acquiring the ownership and then leasing the land or property to an Indigenous organisation at a peppercorn rent (very low rent).

The ILSC currently holds 14 properties in WA in its own name. A key priority of the ILSC is to work with the relevant organisations to transfer the ownership of these assets to the Indigenous organisations. The ILSC creates a plan that will support the organisation to build experience, capability and expertise in property management, so that ownership can be transferred when the organisation is ready.

Examples of properties purchased by the ILSC in WA

- **Purchase for Sister Kate's Home for Kids Aboriginal Corporation**
  The ILSC purchased a block of land in Queen's Park, opposite Sister Kate's Home. The block had been a secret meeting place for the Stolen Generation to meet with visiting parents. The block is now Aboriginal-owned and there are plans to turn it into a cultural centre and place of healing. The ILSC also provided a capital works grant towards the development of the site.
- **Purchase of headquarters for Wilinggin Aboriginal Corporation (WAC) for its operations in Derby**
  The ILSC partnered with WAC to purchase an office space in Derby, suitable for WAC's growing operation in looking after the traditional lands of the Ngarinyin People. The new headquarters will support the ranger, Indigenous Protected Area (IPA) and carbon programs, and accommodate the growing number of staff. The purchase was supported by the Traditional Owners of Derby.
- **Purchase of head office for Aboriginal Family Legal Service WA (AFLS) to strengthen its Perth operations**
  This ILSC purchase gives this Aboriginal service provider a permanent home from which to better coordinate and deliver its statewide services. Savings from rental accommodation and revenue from letting parts of the building will enable AFLS to employ additional staff and assist more clients. Having its own headquarters will also help raise the profile and awareness of AFLS' services in WA.

Sourced with the permission of the ILSC from its report Returning and managing Country 2022–23.

A painting gifted by SKHKAC to the ILSC at the Sister Kate's divestment ceremony. Artist: Collaboration of ILSC and SKHKAC staff - Deanne Tann. Credit - Cole Baxter

The new AFLS headquarters. Credit - Agora Property Group

2. Management projects

The ILSC assists Indigenous organisations to manage or develop Indigenous-held land, including any planning and due diligence that may be required for its development. This includes support for:

- Assisting an organisation to gain the capacity, capability and management experience to hold land or a property.
- Undertaking a feasibility study to identify business development opportunities with existing or potential land assets.
- Developing a land use management plan for a land asset that incorporates cultural, environmental and economic benefits.
- Developing a business plan for the purchase of land or a property.
- Developing a business plan for a specific land-based development proposal.
- WA priorities for the ILSC include:
  - investigating opportunities related to diversification leases
  - supporting management projects related to environmental, carbon and renewable energy, inland water, fisheries and aquaculture projects.

Did you now?

The ILSC is an Australian government statutory authority that reports to the Minister for Indigenous Affairs. Established in 1995, it included the creation of a future fund, now called the Land Account, that generates wealth to fund the ILSC's work and the various land acquisitions and management programs funded by the ILSC.

For more information you can contact the WA office in Perth by phone on 9420 6300 or by email westernoffice@ilsc.gov.au

ILSC funded management projects

- **Property management plan for Belele and Buttah Station**
  In partnership with DPIRD, the ILSC funded a property management plan for two stations owned by Bandundea Aboriginal Corporation in the Murchison. The plan assessed the natural resources, infrastructure (roads, utilities) and economic potential for grazing, together with new opportunities for carbon farming. The plan provided data and a realistic pathway to combine cattle with a carbon enterprise. It informed a ranger program to complement the pastoral business, with land management training, and environmental and cultural maintenance projects.
- **Funding for a business plan to purchase a central office for an Aboriginal family and community services organisation in Perth**
  The business plan incorporated planning for the growth of services delivered by the Ebenezer Aboriginal Corporation and provided the due diligence for the acquisition of a new head office to bring staff and services together in a single location, to improve efficiencies and enhance its profile in the community.
- **Funding for a business plan to map a stepped approach to realise long-term goals for new headquarters and a cultural and wellbeing centre**
  The funding enabled the long-established Kimberley Aboriginal Law and Culture Centre to plan for an updated office building on its property in Fitzroy Crossing and the future development of a cultural and wellbeing centre.
- **Contribution to the cost of a new dialysis clinic in Balgo to keep Elders on Country**
  The ILSC partnered with three Aboriginal organisations to build a new renal clinic in a remote community, reducing the need for Elders to relocate long distances from family and Country.
- **Purchase of equipment to increase the capacity of the Noongar Land Enterprise Group, which owns a native tree farm, to supply the carbon industry**
  The ILSC funded a delivery truck fitted to transport seedlings, a drum pump seeder, a tractor to maintain roads and transport compost, and a ute for seed collection. They also funded customer liaison and general transport. Improved efficiency has enabled the Noongar Land Enterprise Group to grow its customer base, which now includes Greening Australia and farmers who are revegetating their properties.

Sourced with the permission of the ILSC from its report Returning and managing Country 2022–23.

Boola Boornap Tree Farm seedlings ready for sale, Noongar Country, WA. (credit - Jesse Collins)

Tip!

The ILSC's national funding program is called Our Country Our Future.

Part 15 - Where to from here?

Understanding land tenure is one of the many steps required for Aboriginal communities and organisations when making long-term plans for projects that require land. While a lot of information is contained in this guide, there are dedicated organisations that can help you to work through it and provide tailored support. Organisations that may be able to assist you are outlined in this section.

Department of Primary Industries and Regional Development (DPIRD) Aboriginal Economic Development Program

DPIRD's Aboriginal Economic Development Program provides tailored support to Aboriginal organisations to facilitate a flourishing and self-sustaining Aboriginal business sector, career pathways for Aboriginal people, and lasting economic empowerment.

The Aboriginal Economic Development Program's work is built around opportunity areas such as native title and divestment, emerging land and sea-based enterprise, the Aboriginal pastoral estate, and regional Aboriginal business procurement.

Contact the Aboriginal Economic Development Program to find out more and see if they can assist you and/or connect you to other government agencies, funders or industry service providers.

Phone: 1300 374 731 (1300 DPIRD1)
Email: aed@dpird.wa.gov.au
Website: dpird.wa.gov.au/regional-communities/aboriginal-economic-development/

The Department of Planning, Lands and Heritage (DPLH)

DPLH brings state-level land use planning and management, and oversight over Aboriginal cultural heritage and built heritage under the one department.

DPLH is responsible for Crown land administration, which includes the grant of land tenure over Crown land and the management of Crown land, including pastoral leases. DPLH also assists with Aboriginal heritage and lands management, and supports the Aboriginal Land Trust and the Pastoral Lands Board to carry out their roles.

Phone: 08 6551 8002
Email: proposals@dplh.wa.gov.au
Website: wa.gov.au/organisation/department-of-planning-lands-and-heritage

Department of Biodiversity, Conservation and Attractions (DBCA)

DBCA manages WA's conservation estate, its biodiversity, and its cultural and natural values to ensure WA's environment is valued, protected and conserved for present and future generations. DBCA also provides nature-based tourism and recreation experiences for the community. The department's work includes supporting the management of the Perth Zoo, Kings Park, the WA Botanic Garden and Bold Park, and supporting the Conservation and Parks Commission and the Swan River Trust.

DBCA Parks and Wildlife Services
Phone: 08 9219 9000
Email: enquiries@dbca.wa.gov.au
Website: dbca.wa.gov.au

The Department of Energy, Mines, Industry Regulation and Safety (DEMIRS)

DEMIRS' Land Use Planning Branch is responsible for assisting the Minister for Mines and Petroleum with referrals and approvals for proposed Crown land tenure changes. This includes assessing the effect a proposal may have on existing resource tenement holders, and may include referring the proposal to the tenement holder for comment, as well as considering the proposal's impact on present or future access to resources.

The Aboriginal Empowerment Unit within the Resource and Environmental Regulation Group at DEMIRS coordinates and delivers initiatives within the resource industry to ensure mining and resource projects are developed and regulated in a culturally respectful way. Contact AboriginalEmpowermentUnit@demirs.wa.gov.au for more information.

Phone: 08 9222 3333
Website: wa.gov.au/organisation/department-of-energy-mines-industry-regulation-and-safety

Department of Water and Environmental Regulation (DWER)

DWER manages and regulates the state's environment and water resources through the administration of legislation to protect against unacceptable impacts from emissions and discharges, contamination, over-abstraction of water resources, clearing of native vegetation, and the transport and disposal of controlled wastes in WA.

Phone: 08 6364 7000
Email: primehouse.reception@dwer.wa.gov.au
Website: wa.gov.au/organisation/department-of-water-and-environmental-regulation

The Department of Jobs, Tourism, Science and Innovation (JTSI)

JTSI leads WA's economic development through the creation of jobs and a more diverse economy, and by delivering initiatives that support economic activity, from large scale industrial operations to innovative starts-ups and small to medium businesses.

Phone: 08 6277 3000
Email: jtsi@jtsi.wa.gov.au
Website: wa.gov.au/organisation/department-of-jobs-tourism-science-and-innovation

Indigenous Business Australia (IBA)

IBA supports Aboriginal and Torres Strait Islander organisations with pursuing sustainable business ventures through direct investment or asset and funds management services.

Phone: 1800 107 107
Website: iba.gov.au/investing-and-asset-management/products-and-services

Indigenous Land and Sea Corporation (ILSC)

The ILSC supports Aboriginal and Torres Strait Islander people to acquire and manage land, water and water-related rights to achieve economic, environmental, social and cultural benefits. The ILSC offers funding to assist organisations to manage or develop Indigenous-held land, including any planning and due diligence that may be required for the development of land. The ILSC can also part-fund the purchase of land or water assets.

Western Divisional Office – Perth
Phone: (08) 9420 6300
Website: ilsc.gov.au

Landgate

Landgate is the business name of the Western Australian Land Information Authority. Its responsibilities include capturing, maintaining and delivering accurate location information across WA for use in everything from emergency services to agriculture and land use planning. Landgate also maintains the State's land titles registry, ensuring the security and integrity of its information as WA's guardian of property ownership. They also provide fair and expert valuations for land and properties as the basis for rates and tax revenue for Local and State Government.

Phone: (08) 9273 7373
Website: landgate.wa.gov.au

Glossary

Term	What that term means in this guide
Aboriginal Lands Trust (ALT)	The ALT is a statutory body constituted under the *Aboriginal Affairs Planning and Authority Act 1972* (WA). The ALT is responsible for administering WA's ALT estate.
Alternative native title settlement	Means an agreement between the state and a native title party that provides a package of benefits instead of a determination of native title rights and interests. It also provides benefits for any compensation liability that would have been owed by the state to the native title party for past acts of extinguishment.
CALM Act lands and waters	Means certain land and waters defined in section 5 of the *Conservation and Land Management Act 1984* (WA) as being subject to the CALM Act and includes national parks, conservation parks, nature reserves and marine parks.
Co-exist	In this guide refers to two sets of rights and interests that can both exist over the same area of land or waters. For example, a pastoral lease can co-exist with mining tenements. A diversification lease can co-exist with non-exclusive native title rights and interests.
Crown lease	Means a lease granted by the state, as opposed to a private lease.
Divest	Means to transfer the ownership, rights and interest or responsibilities and obligations to another person or entity.
Exclusive possession	Is a characteristic of certain rights in or over land which enable the holder of the right (subject to applicable laws) to enjoy the right to occupy the land to the exclusion of all others. Freehold and leasehold usually grant a right of exclusive possession, but managed reserves, pastoral leases and diversification leases under the LAA do not.
Extinguishment	In this guide refers to the loss of native title rights and interests through the grant of valid prior acts that were fully incompatible with native title rights and interests. It can also refer to the surrender of native title, which results in native title rights and interests no longer existing.
Full and final satisfaction of native title compensation liability	In this guide means that some kind of compensation has been accepted by the native title party, so that any compensation claim it may have had towards the state for the grant of interest that affected or impaired native title rights and interests is settled and there is no more claim against the state.
Indigenous Land Use Agreement (ILUA)	Means a voluntary agreement between native title parties and other people or bodies about the use and management of areas of land and/or waters. It is an agreement meeting the requirements of sections 24BB to 24BE of the *Native Title Act 1993* (Cth).
Indigenous Land and Sea Corporation (ILSC)	(previously named the Indigenous Land Corporation): The ILSC is a corporate Australian government entity established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth). The ILSC works with Indigenous groups across Australia to own and manage land and water interests.
LAA	Means the *Land Administration Act 1997* (WA) which sets out the laws dealing with land tenure on Crown land in WA.
Land holding costs	Means costs that may be associated with holding land, including council rates, water rates, land tax, charges for services such as electricity, insurance, land maintenance costs, lease fees, or a loan for the purchase of land or property. Costs will vary based on various circumstances.

Term	What that term means in this guide
Leaseholder	See Lessee
Lessee	Means the person or entity that hold a lease.
Managed reserve	Means Crown land reserved for a purpose, which is managed by a management body granted the care, control and management of the reserve through a management order.
Management body	Is the corporate body nominated to have the care, control and management of a reserve through a management order granted by the Minister for Lands.
Management order	Is an order granted by the Minister for Lands which is issued under the LAA. The order grants the care, control and management of a reserve to a corporate body.
Management plan	Means a plan that details how Crown land will be managed, as may be required under the LAA or the CALM Act.
Native title claimants	Means a group of persons who have lodged a claim in the Federal Court of Australia seeking the recognition of native title rights and interests.
Native title holders	Means a group of persons who have been recognised as holding native title rights and interests following the lodgement of a claim.
Native title determination	Means a determination made by the Federal Court of Australia as to the existence or not of native title rights and interest in land and waters.
Native title party	In this guide refers to native title claimants, native title holders or the entity that holds native title rights and interests on behalf of the native title holders.
Native title rights and interests	Are rights and interests recognised by the Federal Court of Australia pursuant to the *Native Title Act 1993* (Cth) and registered by the National Native Title Tribunal as a native title determination. The grant of land tenure must address the future act requirements of the *Native Title Act 1993* (Cth) and, for example, may require an ILUA with the relevant native title party.
Nominal rent	Usually means a very low, generally symbolic amount of rent.
Non-exclusive possession	Is a characteristic of certain rights in or over land which means that the holder of the right does not have a right to enjoy and use the land to the exclusion of all others. Pastoral and diversification leases grant non-exclusive possession rights over land.
Non-extinguishment principle	Means an act that affects or impairs native title rights and interests but will not extinguish those native title rights and interests. During the life of the act, the native title rights and interests may, however, be suppressed.
Pastoral permit	A permit granted under the LAA to diversify activities permitted under a pastoral lease.
Peppercorn rent	Is an older or alternative name for nominal rent and refers to the payment of a peppercorn in lieu of money for rent – see definition of nominal rent.
Primary land interest	Is the holder of primary land tenure; in the case of a managed reserve it is the management body.
Primary land interest or primary land tenure	Refers to any type of land tenure, including a managed reserve, various types of leaseholders and holders of freehold title, but it does not include a licence, easement or resources interests (mining tenements and petroleum titles).
Public work	Means a public work as defined in the *Public Works Act 1902* (WA).
Reserve	Means Crown land reserved for one or more specific purposes in the public interest.
Revoked management order	Means the cancelling of a management order, which ceases the role of the management body and their power to care for, control and manage a reserve.
Supressed native title rights and interests	In this guide refers to native title rights and interests that continue to exist, but which cannot be exercised until the termination of an act, usually a type of tenure.
Surrender of native title rights and interests	In this guide refers to the decisions by native title holders to relinquish or hand over their native title rights so that those rights no longer exist.

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