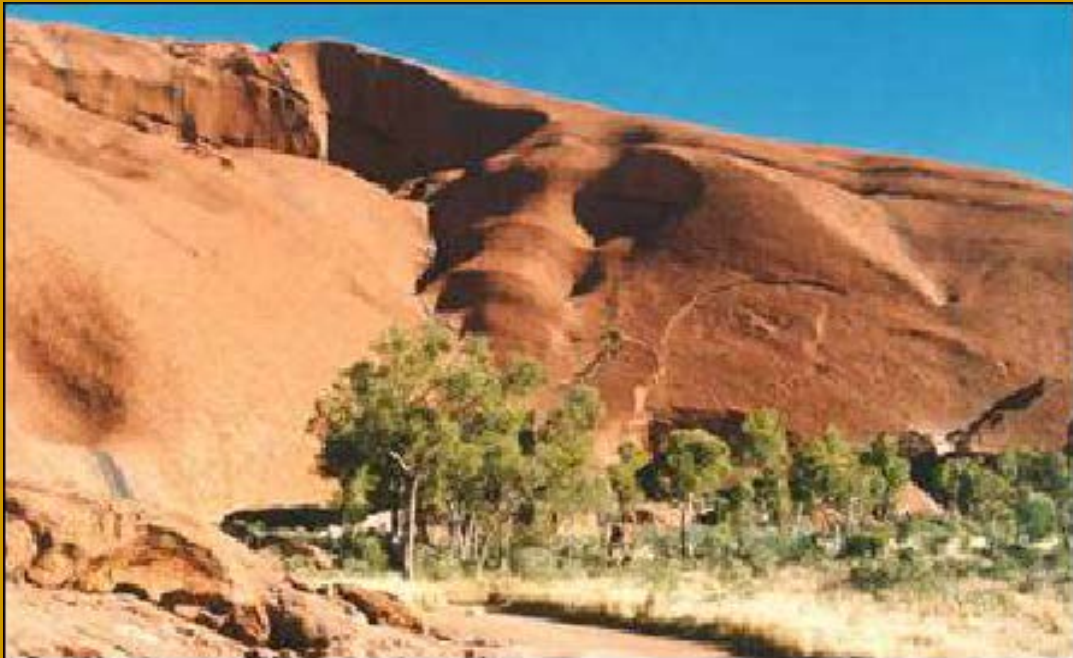


Resource book



AHCILM301A

**Propose appropriate uses
of traditional customs**

About this resource

This work is a Language Literacy and Numeracy (LLN) resource designed to build numeracy skills for those undertaking vocational training in Care and Land Management. It can also be used in any learning field requiring skills in providing appropriate information on cultural knowledge.

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Introduction

This unit covers the use of traditional customs by Indigenous people in caring for country. The information contained in this resource book will help you to complete your assessment project.

The content provides information and knowledge for the following unit of study:

- AHCILM301A Propose appropriate uses of traditional customs

Using this resource book

This resource book has been constructed to use in a flexible way. You can:

- Read the content section by section then complete the project activities.
- Start on your project and use these resources to find information to complete your project.
- Check the information in this resource and compare it with how things are done in your local community.

Preparation

To begin:

- Read the project book so you know what information you will need to complete the project activities.
- Talk to your trainer or learning mentor about any resources you might need to complete your project.

Content

Each section of your project book contains activities that must be completed. The content that relates to the project activities can be found in this resource book.

Section	Topic	Project activities	Resource content
1	Identify the role of traditional customs in Indigenous communities	1.1, 1.2, 1.3	Parts 1.1 to 1.3
2	Native title rights and interests under non-Indigenous law	2.1, 2.2, 2.3, 2.4, 2.5	Parts 2.1 to 2.5
3	Propose appropriate applications of traditional customs	3.1, 3.2, 3.3	Parts 3.1 to 3.3

Section 1 Identify the role of traditional customs in Indigenous communities

Part 1.1 Impacts of traditional customs

In this part you will investigate specific impacts of traditional customs on a local community.

Community

When we talk about a community, we often refer to places marked by names and lines on a map. In reality a community is a group of people, usually living in the same place and who have things in common. They may also live apart and be held together by shared customs, beliefs and language. The word 'community' is made up from the old Latin words:

- **com**, which means together
- **munus**, which means gift

So the word 'community' means 'the gift of being together'. It is a nice way to think of it. Being together suggests relationships and a community is really a group of people sharing relationships; between themselves, with others and with their country.

Traditional communities

Prior to colonisation, Aboriginal and Torres Strait Islander people enjoyed good health and wellbeing. There is evidence to show that Australian Indigenous communities had well established structures including:

- a social organisation based on kinship
- physical and spiritual ties with the land
- effective psychological networks
- the hunter-gatherer lifestyle dictated frequent exercise
- access to a great diversity of animal and plant life
- a nutritious diet, high in fibre and low in salt, sugars and fats
- tribal land boundaries of clan groups which lessened the spread of disease
- people who were experts at bush medicine.

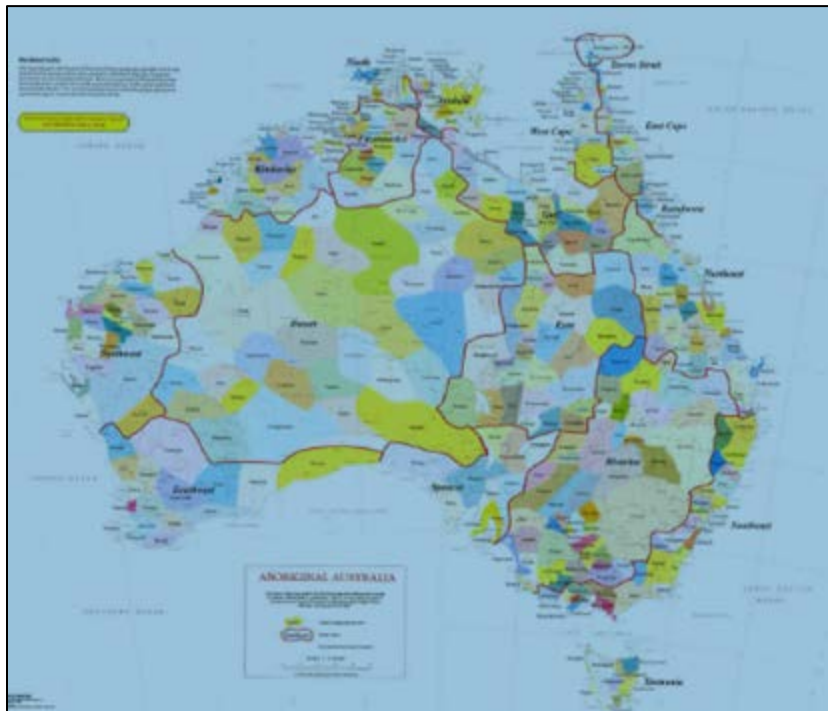
Kinship relationships based on the Dreaming ensured that everyone in the group knew their place and who they were related to. Kinship relations extended to objects and animals in the natural world.

The most important relationship that existed for Indigenous people was their relationship with their traditional land.

Traditional land boundaries

For Indigenous people, travelling across land involves cultural obligations and respect for the traditional boundaries of neighbouring language groups. Custom requires visitors to obtain permission to cross the lands of different nations. Each language group belongs to a particular area of country.

Indigenous tribal boundaries are determined by geographical objects such as mountains, rivers, rocks, lakes and other natural features. People are spiritually attached to their own sacred country. Therefore there is no need to battle for land as there is no desire to take someone else's country for which there is no spiritual connection.



1: Aboriginal Australia, D.F. Horton, 1996

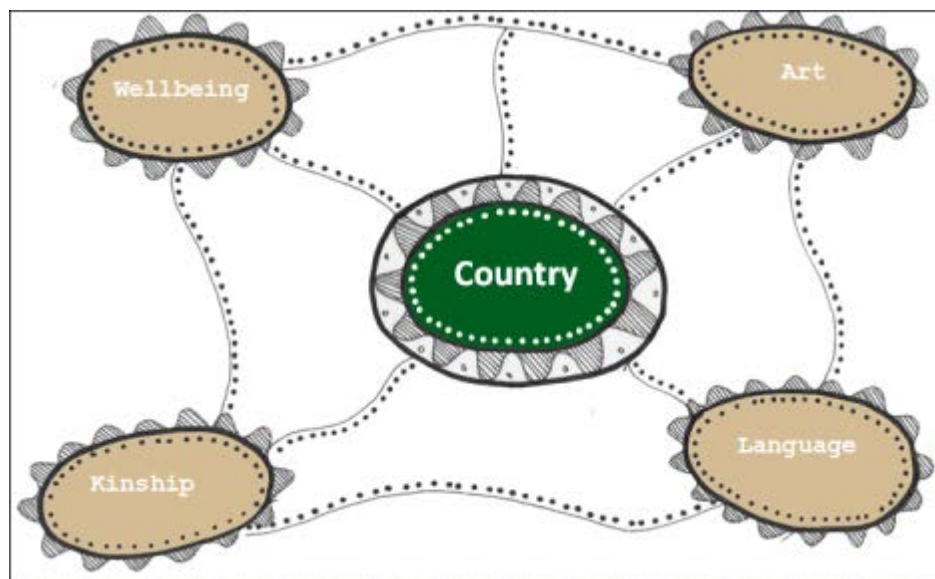
Copied under Part VB of the Copyright Act 1968

©The Macquarie Library Pty. Ltd. 2005, Macquarie Atlas of Indigenous Australia

Country

For Indigenous people, country is considered the mother, creator and giver who must be protected. Country provides spiritual, religious, economic, social and recreational benefits. Country is the link between the Dreaming and the people. This relationship has clearly defined obligations for the people to ensure the survival of the natural world. Each clan group has a role in protecting and maintaining the spirituality of their country and its physical features.

Much of Indigenous law is intertwined with this relationship with the land and the sea. The importance of sacred sites and their protection is an important part of Indigenous culture. This special relationship to place, to clan groups and the ancestral spirits was formed in the Dreaming.



2: The dreaming

Copied under Part VB of Copyright Act 1968, © Commonwealth of Australia 2011, HLTHIR404D Work effectively with Aboriginal and/or Torres Strait Islander People

Indigenous people have a deep spiritual connection to country. Belief systems and spirituality are intertwined with the land and this forms the basis of all culture and laws.

Cultural Water

Indigenous people see water as much more than an essential service. They believe that certain water has spiritual and living qualities – ‘cultural water’. Cultural water is connected to many ceremonies, heritage, initiation, and birthing sites. Water is valued not only for what it can provide, but also for what it is in itself – an important part of spirit, culture and Dreaming. Indigenous people talk about ‘stand-alone’ water which must be protected from other interests. It is important to recognise the spiritual value of water when considering land rights and management strategies.

Traditional land management customs

The special relationship that traditional people had to country was formed in the Dreaming. The people have cultural obligations to fulfil to the ancestors. This relationship to country determines who speaks for country and how it is spoken about. Taking care of the country includes walking over the land, returning to the sacred places and performing ceremonies. This ensures that knowledge is passed on to future generations. Some of the land care practices of traditional people included:

Seasonal movements - Movement during seasonal changes was one of the key ways that Indigenous people efficiently managed their environment and its resources. The people travelled across the land, seasonally following the rain, climate and seasons.

Burning practices - Traditional groups used seasonal burning to hunt and to replenish the land. The country was burned according to the food species being hunted or gathered. For example, kangaroos like green grass and open space. Burning patches near shade trees creates an environment to attract and retain kangaroos.

Shelter construction - The structure of Indigenous buildings varied greatly according to the ongoing needs of the community. Factors that influenced the construction of dwellings included the location of food and water, clan size, climate changes and the availability of building materials.

Tools and weapons - Indigenous people constructed a wide variety of boats, tools, weapons and implements that varied according to group and location. Many of these items had multiple uses in food collection and preparation as well as in ceremonies.

Stone technology - Indigenous people have a history of stone technology dating back 60,000 years. The earliest examples of ground-edge cutting tools are found in Australia. Indigenous people were also the first to grind seed.

Hunting techniques - Indigenous people were excellent hunters. In the coastal areas, people used harpoons and spears when killing dugongs, turtles, fish and other smaller sea animals. The inland people were skilled animal trackers. Men often hunted in groups and used boomerangs to bring down kangaroos, birds and emus.

Gathering techniques - Women worked together to gather small animals, seafood, insects, mushrooms and plants. To do this effectively the women needed a wide range of techniques, skills and knowledge.

Fish trapping - Long before colonisation, communities were using the principles of engineering, physics, water technology and animal behaviour to catch large numbers of fish in traps. Fish trapping sites became significant meeting and ceremonial places.

Food preparation methods - The success of Indigenous food collection and preparation depended on a deep understanding of species, seasons and land management. As well as hunting and gathering, there is evidence of the use of farming, agriculture and horticulture to increase crop sizes and yields.

For Indigenous peoples of the Torres Strait region cultivation practices were part of traditional life where crops such as sweet potato, cassava and crops were grown.

Although Indigenous beliefs and cultural practices vary according to region, all people maintained a strong connection to traditional customs.



Discuss the following questions with your learning mentor

What do you know about the traditional land boundaries of the local language group?

Do people have sites where cultural water is located? If so what rules are in place for visiting these sites?

Part 1.2 The traditional roles of men and women in land management

In this part you will explore the roles of Indigenous men and women in land management practices.

Land management

Land management rules and practices are passed down from the Dreaming. Before colonisation Indigenous people used a variety of methods to manage the land and its resources. The landscape was not a pristine wilderness; it was a well-managed and sustainable network of living areas, and food and water supply sites.

Sustainable practices

Traditionally, Indigenous people lived off the land and sea. Many were hunter-gatherers, moving with the seasons and carrying only necessary possessions. Knowledge was passed on to members of groups and foods were hunted or gathered in a way which ensured the continuation of a stable ecology and a quality food supply.

By constantly relocating to maximise food resources, Indigenous people ensured that resources were not over-used. The large variety of available food and sustainable hunting and gathering techniques made sure that no one food source was over-exploited. Enough seeds for regrowth were left in place and young or breeding animals were protected. Not all the eggs were taken from a nest and certain foods were prohibited by taboos. Strong evidence exists for the use of renewable practices such as propagation, agriculture and animal trapping.

Women's business

The role and status of women in traditional Indigenous society has not been fully understood by non-Indigenous people. Non-Indigenous people thought that men, rather than women, performed the significant roles. This assumption arose because women, after marriage, usually left their own country to live in their husband's country. It appeared that men, rather than women, exercised authority in the group.



3: Women's business

Source: The National VET E-Learning Strategy, Flexible Learning Toolboxes, Interactive Ochre 907, © Commonwealth of Australia 2006

We now know that women possess separate sacred knowledge and carry out separate ritual, women's business, which complements that of the men. Women will pass on secret women's stories to girls approaching puberty. Ceremonies are conducted to teach secret women's business, preparing girls for the roles they will play in the community. These stories cannot be told to men.

Women's business may extend to issues that affect the whole group, including relationships to land and caring for country. Women, like men, gain in power and prestige as they grow older. Women with strong spiritual and personal qualities may achieve a status similar to, but separate from that of men.

Men's business

At initiation ceremonies, older men will tell boys approaching manhood stories of hunting, survival and caring for country. Women are not allowed to know these stories. The boys are taken into the bush where Elders pass on the laws relating to country, spiritual beliefs and the role and responsibilities that men have within the community.

Initiation ceremonies may take many years to complete. Because of the highly secretive nature of the information passed on in these ceremonies, the whole community may be closed to the public at the time of the ceremony.

Women's places

Women's places are linked to traditional stories or events that relate to women's business. Cultural practices of importance to women are performed here. Women's sacred places are of particular importance to women and men are not to go to these places.

Men's places

Men's places are linked to traditional stories or events that relate to men's business. Cultural practices of importance to men are performed here. Men's sacred places are of particular importance to men and women are not to go to these places.

Cultural places

Cultural places are places to which the local language group might have a kinship tie, a story place, a working place for food processing or a gathering and eating place. Men and women are generally permitted to go to these places. Story places have a story attached to them that provide guidance for people to help them improve their lives.



Discuss the following questions with your learning mentor

What do we mean when we talk about sustainability?

What are the cultural places in the local area and how are they used by local people?

Part 1.3 The impact of European settlement on land management

In this part you will look at the differences between current and traditional land management customs.

European settlement

Indigenous Australians were experts at managing land in a sustainable way. They also created advanced social structures that minimised conflicts while protecting the natural resources. Knowledge was ancient, highly detailed and passed on through law, art, dance and ceremony to ensure its survival. Into this idyllic world crashed a culture whose beliefs, laws and practices were completely at odds with the Indigenous world – the Europeans had arrived.

Terra Nullius

In 1770, Captain James Cook saw no signs of Indigenous land ownership. Of course, he was looking for western indicators of ownership; ploughed fields, fences and barriers. He concluded that Australia was an empty land or 'terra nullius'. In 1788 the first Governor, Phillip, 'took possession' of the land in the name of King George. Thus began a clash of cultures and the decimation of the traditional Indigenous way of life.



4: Terra Nullius

Source: The National VET E-Learning Strategy, Flexible Learning Toolboxes, Interactive Ochre 907, © Commonwealth of Australia 2006

Disease

Within weeks of the arrival of the first fleet, Indigenous people began dying of smallpox, measles, influenza and a host of other illnesses to which they had no immunity.

Conflict

The colonial settlers had no knowledge of the Indigenous culture, and didn't try to understand it. Instead they tried to 'civilise' the Indigenous people. When the settlers encountered resistance they turned to oppression. Because they had better weapons they inflicted severe losses on the Indigenous people.

Dispossession

The colonial settlers believed that they had a right to 'open up the land' to pastoral (farming) development. Indigenous resistance to the loss of their country was fierce but ultimately useless. As land was lost, so was their connection to the Dreaming and their cultural identity and spirit.

Population

The devastating impact of colonisation resulted in a reduction of the Indigenous population of up to 90% by 1920.

White settlement

The Indigenous people resisted the settlement of their land, but they had little chance against the guns of the soldiers and settlers. The advance of white settlement was relentless, eventually pushing the Indigenous resistance into remote and mountainous areas.



5: White settlement

Source: The National VET E-Learning Strategy, Flexible Learning Toolboxes, Interactive Ochre 907, © Commonwealth of Australia 2006

As the colony expanded and more Indigenous land was lost, Indigenous people became dependant on the British settlers for food, water and shelter. As their traditional way of life slowly died out many Indigenous people started living on the outskirts of towns or started working as labourers and servants.

What followed was a history of resettlement on reserves, the forced placement of many thousands of children in institutions, and the loss of health, wellbeing and culture. Protection and assimilation policies had a harsh impact on the Indigenous people; separate education for Indigenous children – town curfews – no social security – lower wages – State guardianship of all Indigenous children.

Loss of country

Not only did Indigenous people lose the access and use of their country, they had to witness the decimation of their land and water due to settlement, farming, sheep and cattle, pest and diseases.

Then came the destruction caused by land clearing, mining, agriculture, dams and forestry. To a culture so closely aligned to the protection and care of country this was devastating.

Over time, much cultural heritage was lost, especially in urban and rural areas. The ancient knowledge of land care was dying out. The people had to find a way back to their land, reclaim their heritage and practice their traditional methods of caring for country.

It was not until the late 1900s that reconciliation policies gradually started to address the crushing disadvantage suffered by Indigenous people.



Discuss the following questions with your learning mentor

What do we mean when we talk about 'terra nullius'?

What stories do the old people in the community tell about the early days of European settlement?

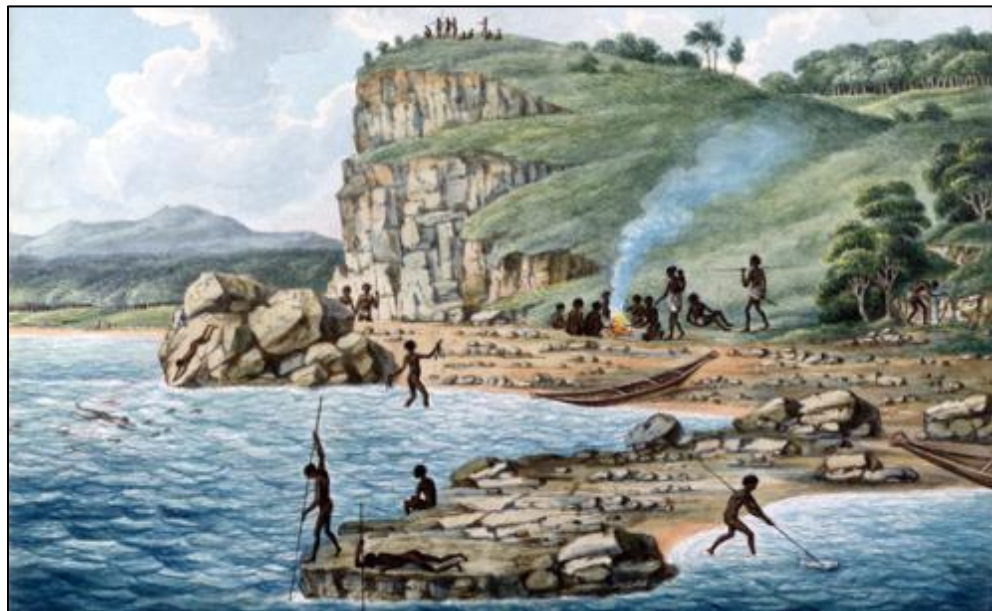
Section 2 Native title rights and interests under non-Indigenous law

Part 2.1 Conflicts of interest – traditional people

In this part you will investigate potential conflicts of interest between traditional people exercising their native title rights.

Land rights prior to colonisation

Prior to white settlement, traditional land boundaries were clear and each Indigenous nation respected the land of its neighbours. People knew who their mob was and the rules relating to neighbouring land were defined by the Dreaming and lore. People were spiritually attached to their own sacred country and there was no need for land disputes.



6: Traditional land boundaries

Source: The National VET E-Learning Strategy, Flexible Learning Toolboxes, Interactive Ochre 907, © Commonwealth of Australia 2006

Land rights after colonisation

The white settlers desire to use the land for settlements, agriculture, animal production and mining drove Indigenous people off their sacred land. Only in very remote areas did traditional culture survive, yet even there the traditional owners had no legal recognition of their attachment to the land.

Some people submitted to working for little or no wages within the white settlements. Others were taken from their land and re-settled in reserves along with people from other nations and clans. As a result the strict inter-nation marriage laws began to break down. Over time, generations of children were born away from country. The question of which nation a person belonged to became blurred. For the first time the most sacred of questions became difficult to answer:

- Who is my mob?
- What is my language?
- Where is my country?

Conflicts of interest

As decades passed this disconnection from land and mixing of heritage ultimately led to conflicts of interest between traditional people themselves. So not only were traditional owners in dispute externally with white society, but internally with other Indigenous people.



Discuss the following questions with your learning mentor

How do the local people interact with neighbouring language groups?

What are the effects of mixed heritage in the local community?

Part 2.2 Native title rights

In this part you will learn about native title rights within non-Indigenous law.

The lands rights movement

The 1960s saw the beginning of policy shifts that began the process of reconciliation. The land rights movement recognises the rights of Indigenous Australians to access and use their traditional lands. Like many legal issues in Australia there can be a large amount of confusion, due mainly to the complex structure of Australian government. It can be difficult to negotiate a path through the multiple layers within council, state and federal departments.

Where it began: the Wave Hill protest (1966)

In an historic event, a Gurindji Aboriginal stockman, Vincent Lingiari, led a strike at Wave Hill in protest against working conditions and wages. He also demanded the return of their traditional lands. Over the next seven years the strike gained widespread public support and influenced the 1972 Labor Party's policy on land rights.

The Whitlam speech

The years from 1972-1975 was the period of the Gough Whitlam Labor government and a time of enormous social change. In his policy speech, titled 'It's Time', Whitlam promised:

'We will legislate to give Aborigines land rights - not just because their case is beyond argument, but because all of us as Australians are diminished while the Aborigines are denied their rightful place in this nation'.

Whitlam also promised to allow Indigenous self-determination of economic, social and political issues. He created the first Department of Aboriginal Affairs. It was Gough Whitlam who poured soil into Vincent Lingjari's hand to mark the end of the Wave Hill protest.



7. Wave Hill Protest

Copied under Part VB Copyright Act 1968, Photograph by Bishop, Mervyn; Northern Territory; 1975
Source: <http://www.powerhousemuseum.com/collection> accessed 23 July 2014

Land rights are different from native title

Many people are confused by the terms 'land rights' and 'native title'.

Land rights: The term 'land rights' refers to a grant of title from a government. So it refers to the **government giving rights** to Indigenous people.

Native title: The term 'native title' refers to **Indigenous people having to prove a connection** with country (land or sea) through the existence of traditional laws and customs. Once proved and native title is granted, this connection is recognised by law.

More about land rights

A successful land rights claim results in a special grant of freehold title or perpetual lease.

- Freehold title: freehold gives the owner the exclusive right to the land for an indefinite period of time. The owner of the freehold can sell the land to anyone else. The owner may also lease or rent the land to someone else.
- Perpetual lease: A perpetual lease is defined as a lease that continues for an indefinite period of time at the discretion of the lessee, or tenant. To be legal, this type of lease would have to be specified in a contract and signed by both parties.

More about native title

Native title does not give new rights to Indigenous people. **It recognises rights which have existed for thousands of years.** Native title is a set of rights in relation to land or waters that it is possessed by people:

- whose traditional laws and customs are acknowledged
- who have a connection with the area by the maintenance of those traditional laws and customs
- whose rights and interests are recognised by the common law of Australia.

Mabo

Before 1992, native title was not an issue in Australian politics. Prior to that, the talk had been about land rights. Most State and federal governments had passed land rights legislation of one form or another. However, in June 1992 the High Court handed down a judgment in a case called Mabo.



8: Eddie Mabo

Source: The National VET E-Learning Strategy, Flexible Learning Toolboxes, Interactive Ochre 907, © Commonwealth of Australia 2006

In a 10-year period, the Meriam people of the Murray Islands in Torres Strait, led by Eddie Koiki Mabo, took action to the High Court to overturn the doctrine of *terra nullius*; empty land. The High Court decision of 1992 rejected *terra nullius* and recognised Indigenous native title over certain types of land.

The Mabo decision saw terra nullius overturned and Indigenous native title recognised

Native Title Act 1993

As a result of the Mabo decision, a method was needed to deal with all the flow-on claims for other Indigenous land across the country. Therefore, the Commonwealth Native Title Act of 1993 was passed. It established the National Native Title Tribunal to determine native title rights. The purpose of the Act was to:

Provide a national system for the recognition and protection of native title and for its co-existence with the national land management system.

In other words, the Act is meant to explain how native title can exist and interact with other, non-Indigenous land titles.

The Native Title Act sets up processes to:

- determine where native title exists
- how future activity impacting upon native title may be undertaken
- provide compensation where native title is impaired or extinguished.

The Act gives Indigenous native title holders the right to be consulted and to participate in decisions about any activities proposed to be undertaken on their land.

National Native Title Tribunal, www.nntt.gov.au

The National Native Title Tribunal was established by the Native Title Act 1993 and came into operation in January 1994. The Tribunal cannot decide whether native title exists or does not exist. However the Tribunal may provide assistance and information to people involved in the native title process.

The Tribunal has a number of powers and functions under the Act including:

- mediating between the parties to native title applications
- acting as an arbitrator (or umpire) in situations where the people cannot reach agreement
- helping people to negotiate indigenous land use agreements
- determining any valid objections to certain types of agreement.

The WIK decision

In 1996 the High Court made another important decision in the Wik case which relates to a claim of native title on land that includes pastoral leases. Pastoral leases are a particular type of leasehold that allows Crown land to be used for grazing stock.

Prior to the WIK decision the pastoral leases granted by the Queensland Government were deemed to have extinguished native title and that pastoral leaseholders had a right to exclusive possession of the land. The WIK people of Cape York challenged this proposal in the High Court.

The court ruled that the granting of a pastoral lease did not necessarily extinguish native title. Native title could exist with the rights of the pastoral leaseholder.

The WIK decision stirred up a political and legal hornet's nest. Landholders all over the country feared that their freehold land titles would be in danger of being taken from them.

The Wik people of Cape York fought to have native title recognised as co-existing with pastoral leases

Native Title Amendment Act 1998

The Native Title Amendment Act 1998, commonly referred to as the '10 Point Plan' was passed by the Federal Government in response to the 1996 Wik decision. The act introduced amendments relating to native title rights co-existing with other rights.

The 10 Point Plan

The 10 points (amendments) are very important to look at as they set the tone for all the native title claims to follow. The 10 points were as follows:

1. The National Native Title Tribunal holds absolute authority over claims for native title
2. State governments are empowered to extinguish native title over crown lands for matters of 'national interest'
3. Lands providing public amenities are exempt from native title claims
4. Mining and pastoral leases are allowed to co-exist with native title
5. The National Native Title Tribunal can create access to traditional lands rather than granting full native title
6. A registration test is imposed on all claimants
7. The right to claim native title in or around urban areas is removed
8. Government is permitted to manage land, water, and air issues in any site
9. Very strict time limits will be placed on all claims
10. Indigenous Land Use Agreements will be created to promote co-existence.

The 1998 Act provided greater security to non-Indigenous holders of pastoral leases and other land titles. However many people argued that the act watered down much of the power of the 1993 Act.

Native Title Amendment Acts 2007 and 2009

These acts introduced a package of technical amendments to improve the performance of the native title system. The acts were aimed at making the native title process more efficient and to speed things up on the 580 claims that had been registered but not yet determined.



Discuss the following questions with your learning mentor

Explain in your own words the outcomes of the Mabo and Wik decisions.

Discuss two of the 'ten points' that you think are the most relevant and discuss how they affect the local community.

Part 2.3 Native title rights and other valid grants of title

In this part you will explore how native title rights can coexist with other valid grants of title.

The land rights movement and the native title legislations made huge advances for the return of access to land for Indigenous people. However there are, and always will be, other interests that can state some form of claim over the land. Native title rights can vary depending on the rights of other people in the same area. Native title cannot take away anyone else's valid rights to land.

Coexistence

Coexistence is the exercise of native title rights alongside the rights of others over the same area of land or waters. Where people have leases, licences or a right of public access, native title may exist alongside these other rights.

For example, native title rights to go onto land and hold ceremonies may coexist with the rights of a pastoral leaseholder to graze cattle. Coexistence is about sharing the land and waters in a way that recognises everyone's rights and interests in the area. Indigenous peoples' interests are recognised formally through agreements or land title in more than half of Australia's land area.

Crown land

Crown land is also called 'State land'. Crown land is not held under private ownership. It might be subject to rights granted by the Crown under legislation, such as a mining lease. It may also be subject to native title.

Freehold

Freehold title means the land owner owns the property outright in perpetuity (which, in legal terms, means 'until the world ends'). Under the Native Title Acts, the valid grant of a freehold estate on or before 23 December 1996 is known as a 'previous exclusive possession act'.

This means that native title has been extinguished over the area. Native title claims are not allowed to include land and waters covered by previous exclusive possession acts in their applications; therefore they would normally exclude freehold areas.

Pastoral Leases

Pastoral leases, which cover some 40% of the Australian land, are a particular type of leasehold that allows Crown Land to be used for grazing stock. After the Mabo decision, there was uncertainty as to whether native title claims over pastoral leases would extinguish these leases.

The Wik decision of 1996 clarified the uncertainty. The court ruled that native title could coexist with other land interests on pastoral leases. Where there is a conflict of rights, the **rights under the pastoral lease would extinguish the remaining native title rights**.

Mining

Minerals are defined as all naturally occurring substances that are obtainable from the ground by mining. This does not include petroleum products.

A mining lease is issued by State Governments to allow the right to mine for minerals over a specific area of land. Mining leases are granted under the provisions of individual State Mining Acts.

To be granted a mining lease, applicants must demonstrate that there is an economically mineable mineral deposit within the area of the proposed lease. They must also show that they have the financial and technical resources to carry out mining in a responsible manner.

Mining and native title

There have been many disputes in relation to mining leases and native title. Mining leases can coexist with native title if there is an Indigenous Land Use Agreement in place.

However there have been many legal arguments over who has access to and use of the land. Can Indigenous people perform traditional practices on native title land where a mining lease exists? These disputes especially focussed on leases that were in place prior to the Native Title Acts and amendments.

High Court mining ruling 2014

The Ngarla People of Western Australia were granted native title over thousands of square kilometres of land and water in 2007, which included the former Mount Goldsworthy iron ore mining lease¹. Even though the mine was closed in 1982, the mining lease still existed. The Federal Court ruled that although native title rights existed for the Ngarla People, they could not be exercised while the mining lease still existed.

After many rulings and appeals the High Court ruled in March 2014 that:

- **native title rights did not prevent mining companies** from doing anything they were lawfully allowed to do under their mineral leases
- camping, hunting and holding traditional ceremonies were not extinguished by mining leases and **the two could co-exist**.

¹ ABC news viewed 25 March 2014, <http://www.abc.net.au/news/2014-03-12/native-title-mining-co-exist-says-high-court/5315492>

It is obviously in the best interests of a community to negotiate outcomes with mining companies that are mutually agreeable, and avoiding lengthy and expensive legal battles.



Discuss the following questions with your learning mentor

What do you think is the best way for Indigenous communities to share their land with others?

What are the benefits of allowing mining on Indigenous country?

Part 2.4 Conflicts of interest and the rights of others

In this part you will consider how any conflict over the rights of others can be overcome.

Like any conflict, disputes over land use and management are caused by the absence of communication, information and agreement. The formal process to set up partnership agreements is called an Indigenous land use agreement (ILUA).

Indigenous Land Use Agreement (ILUA)

An ILUA is a voluntary agreement about the use and management of an area of land or waters where native title exists or might exist. The agreement is made between native title groups and others such as miners, pastoralists or governments. The agreements are registered by the National Native Title Tribunal. A registered ILUA is legally binding on the people who are parties to the agreement.

An ILUA may be a better option than a native title claim. ILUAs may be negotiated over issues including:

- access to an area
- how native title rights coexist with the rights of other people
- native title holders agreeing to future developments, such as mining, tourism or residential developments.

An ILUA has the advantage of being more flexible than other options. It can be tailored to suit the needs of a particular community and the unique nature of their country.

ILUAs were introduced in the Native Title Act 1998 and formed one of the key '10 points' which were proposed as major amendments to the original Native Title Act of 1993.

ILUA Example – Argyle Diamond Mine

The Argyle Diamond Mine in Kununurra Western Australia is one of the world's largest producers of diamonds. The Argyle Diamond Mine was commissioned in 1985, and has since produced more than 791 million carats of diamonds.

The Argyle mining lease is located on the traditional country of the Miriwung, Gidja, Malignin and Woolah peoples. Before the mine started the land was covered by a pastoral lease. For more than 28 years the mine has operated as an open pit and is now focusing on its future as an underground mine. How can such a large mining operation coexist within the land rights of the traditional owners?

The Argyle ILUA

In 2005, an Indigenous Land Use Agreement between the Traditional Owners and Argyle was registered by the National Native Title Tribunal. The agreement formally acknowledged the Traditional Owners' rights and interests, including native title rights, in the mining lease area.

The agreement also includes:

- **Land rights.** Argyle holds the pastoral lease on trust for the life of the mine. It will then be returned to the Traditional Owners to lodge a native title claim over the pastoral lease area.
- **Income.** The mine makes annual payments to local indigenous communities. The income is managed by the Traditional Owners' [Gelganyem Trust](#).
- **Employment.** The agreement gives support and preference to local Indigenous people for jobs and training.
- **Land management.** Traditional Owners have the right to visit the mine site and raise any matters they wish to discuss, including land and water management and rehabilitation. Major proposals must seek the views of Traditional Owners before proceeding.
- **Indigenous site protection.** More than 75 Indigenous heritage sites have been identified on or near the mining lease. A site protection management plan, negotiated with the Traditional Owners provides the strongest possible protection for these sites.

Register of Indigenous Land Use Agreements

The National Native Title Tribunal continually registers new agreements. When registered with the Tribunal, ILUAs bind all parties and all native title holders to the terms of the agreement. The current status of registered ILUAs is:

- Total number of registered ILUAs in Australia: 865
- Total number of registered ILUAs per State/Territory:
 - Queensland: 535
 - Western Australia: 75
 - Northern Territory: 104
 - Victoria: 53
 - New South Wales: 9
 - South Australia: 89.

To search the register of ILUAs go to the [Registration of ILUAs](#) website. You can also view a [map](#) and a [table](#) of registered and currently notified ILUAs (updated quarterly).



Discuss the following questions with your learning mentor

Are there any ILUAs in your local region?

What is the national organisation that registers ILUAs?

Part 2.5 Practising traditional customs and native title

In this part you will look at practising traditional customs and native title.

Native title is the recognition by Australian law that Traditional Owners have rights and interests to their land that are based on their heritage, laws and customs. The native title rights and interests held by particular Indigenous people will depend on what traditional laws and customs were carried out as well as the rights and interests held by others in the area.

Traditional Owners

Despite the popular term, 'Traditional Owners', it is important to understand that native title does **not** provide Indigenous people with ownership of the land.

The use of the term 'Traditional Owners' started in the Aboriginal Land Rights (Northern Territory) Act 1976, which established ways for Aboriginal people to *claim land in the territory on the basis that they were the "traditional Aboriginal owners" of the land.*

In fact, the concept of land ownership was not a part of traditional Indigenous society. The language groups for a particular area saw the land as their mother and creator. As such, they were custodians and protectors but never 'owners'.

Native title rights and country

Native title rights and interests can vary according to the traditional laws and customs that were in place for the area concerned. These customs must be shown to have existed in order for them to be negotiated in the native title claim. Some of the key rights that may be claimed include the right to:

- live on country
- access the area for traditional purposes
- camp
- perform ceremonies
- visit and protect important places and sites
- hunt, fish and gather food
- collect traditional resources like water, wood and ochre
- teach law and custom on country.



9: Practising traditional customs

Source: The National VET E-Learning Strategy, Flexible Learning Toolboxes, Interactive Ochre 907, © Commonwealth of Australia 2006

Exclusive possession

In certain cases, native title includes the right to possess and occupy an area to the exclusion of all others. This is called 'exclusive possession'. This includes the right to decide who comes onto country and what they can do there. Exclusive possession usually involves unallocated or vacant Crown land and some areas that have always been held by Indigenous Australians.



Discuss the following questions with your learning mentor

What does '*land ownership*' mean to you?

What do we mean by the term '*exclusive possession*'?

Section 3 Applications of traditional customs

Part 3.1 Traditional customs, native title and ethics

In this part you will look at the ethical implications of carrying out traditional customs or native title.

Ethics

Ethics is the study of what is good and what is bad. Ethics tries to answer questions like:

- What actions are good? What actions are bad?
- How can we tell the difference?
- Are good and bad the same for everyone?
- How should we make hard decisions that might help or hurt other people?
- How do our actions affect others?

Ethical traditions

An ethical tradition relates to things that a whole group of people believe to be either right or wrong. People normally believe these things because they were brought up by people who have held the belief for a long time.

For example, if you are brought up in a culture that believes it is OK for a man to have many wives, then you will share that belief. People brought up in a different culture may believe that having more than one wife is wrong.

Ethical tradition is sometimes called having morals – what you believe to be right or wrong. Ethical traditions are not normally written down; they just are a part of the everyday lifestyle of the community.

When cultures clash

From the first day of colonisation, the European and Indigenous people were opposed. On almost every aspect of belief the two sides were different, and of course, each side saw the other as being wrong. With superior military power, the European culture was able to assert its power over the Indigenous people.

Cultural practices and heritage that had existed peacefully from ancient times were decimated in a few short decades. It is only due to reconciliation efforts of the last 50 years that there is now a revival in people wanting to reclaim heritage and ensure that traditional customs can survive.

Cultural ethics into the future

There is a large collection of guidelines and protocols that have been developed to ensure sound ethical practices for non-Indigenous people working with Indigenous communities. It is harder to find guidelines that Indigenous people have developed to guide their own ethical behaviour.

Many traditional customs may now be seen by both Indigenous and non-Indigenous people to no longer be viable, sustainable or ethical. Examples include:

- hunting endangered marine species such as dugong and turtle
- harvesting eggs of endangered birds
- certain land care practices.

Indigenous people have an important role to play in deciding for themselves which cultural practices are no longer ethical or viable. The ongoing sustainability of cultural practices needs to be assessed and monitored by Traditional Owners and addressed through community participation.

Looking inwards

Indigenous culture has much to offer and add to the debate about sustainable land care. However, Indigenous people need to firstly look inward to ensure that what they are doing themselves is what they want to share with others.



Discuss the following questions with your learning mentor

What does the term 'ethics' mean to you?

Do you think that traditional people, prior to white settlement, had their own concept of 'Ethics'?

Part 3.2 Traditional customs and mainstream systems

In this part you will consider the use of traditional customs with mainstream systems.

Country, people, and sustainable practices

Indigenous culture has much to offer those brought up with non-Indigenous land care practices. Both cultures share the view that:

Country is a resource that can sustain people

Traditional Indigenous cultures had very clear and practised methods for sustaining country prior to colonisation. In modern Australia there is an ever growing movement to develop long term sustainable land care management practices.

'How can people sustain country now?' is the important question

The traditional landscape

In his book, 'The Biggest Estate on Earth', Bill Gammage² provides accounts of early white settlers, as well as paintings, that described the Australian landscape. The descriptions were of a well-managed estate comprising woodlands, grasslands and patches of tidy shrub. Water was retained on country and burning technologies ensured the landscape was less fire prone. The countryside was described as parkland.

Colonisation

Unfortunately the land use practices of early white settlers were completely at odds with Indigenous methods and the ongoing sustainability of the land. The list of inappropriate practices is extensive and includes:

- land clearing, deforestation
- introduced species, especially cattle and sheep
- introduced pests; rabbits, cane toads, weeds
- overuse and abuse of water resources
- salination of soil
- barriers, fences, roads.

We should acknowledge the damage that European land care practices have done. Reflecting on the past successes and failures can be used as a learning guide for future actions. Indigenous land care managers have much to offer this process. We must all look for opportunities to work together for a sustainable future.

² Gammage, B. (2011) *The Biggest Estate on Earth: How Aborigines Created Australia*, Allen & Urwin, October 2011

Working together

Non-Indigenous land care managers are increasingly aware of the damage that has occurred and the need for more sustainable practices. Many are now looking at how things were done traditionally and are thinking: 'You know, the traditional land care managers were on to something! Let's involve them more in the decisions we make about the future of country'.

Best practice example: Kosciuszko to Coast (K2C)

Kosciuszko to Coast (K2C) is a partnership of numerous organisations, businesses and individuals working with landholders between Kosciuszko and the coast of New South Wales. The goal of K2C is to conserve and recover the region's grasslands, woodlands and wetland areas as well as the flora and fauna found there. Visit their website at [Kosciuszko to Coast](#) for a wide range of topics and publications.

Rod Mason

K2C has conducted projects aimed at recognising, trialing and implementing traditional Indigenous land management practices. The project is run by Rod Mason, a respected Ngarigo elder and a traditional land manager and knowledge holder. Rod teaches using a 'show and tell' and 'story telling' style to reintroduce knowledge around the living environment; the plants and animals of the country.

Rod believes that the reintroduction of traditional indigenous practices can start the land recovery process as well as achieving better farming outcomes. Rod's land care teaching covers:

- managing forests, woodlands and grassy ecosystems
- minimising fire risk
- culturally sensitive vegetation
- wicks and soil rebuilding
- native animals; the original landscape gardeners
- new products and industries
- on-ground practices
- monitoring the TLMP sites.

Copies of Rod's booklet on these and other topics can be downloaded from the [TLMP booklet](#) webpage. The K2C project is just one of numerous examples of how traditional Indigenous knowledge can work together with mainstream land care systems.



Discuss the following questions with your learning mentor

What local practices and projects are being used to address 'How can people sustain country now?'

What traditional land care practices are still being used in the local community?

Part 3.3 Advice for legal representatives

In this part you will think about how you could advise legal representatives about integrating traditional customs and mainstream systems.

Facts, figures and details

Meeting with legal representatives is just like talking to any other person; except for one thing; legal representatives work mainly with facts, figures and details. So these are what you have to be good at when discussing legal matters like native title and ILUAs. This can be a challenge, especially for community people who for centuries have passed information on orally and in the form of stories, art and dance.

Tips for meeting with legal representatives

Tip 1: Be yourself

You need to be able to communicate easily with your legal rep and to feel confident that you can work together. Talk the way you normally do; speaking in legal terms that you don't really understand is uncomfortable. Ask questions and seek clarification if you don't understand something.

Tip 2: Set clear and achievable goals

Be clear about what you expect the legal rep to do for you. You both need clear goals about what you want to achieve. Make sure your goals are SMART:

- Specific
- Measurable
- Attainable
- Relevant
- Time-based.

Tip 3: Talk to all stakeholders

The legal rep is there to help you to make accurate decisions. The best decisions are made by people who talk about an issue with all the people who are affected by it – referred to as 'stakeholders'.

- Good decision-makers talk to all the stakeholders; **before, during and after** the process.
- Poor decision-makers tell the stakeholders the outcome of the process **after** the decision has been made.

Talk to as many people as possible when gathering information for legal matters. The most unlikely person, even a child, may have an important thing to say.

Tip 4: Write down the details

A wise person once said: 'If it isn't in writing, it never happened!' This isn't true all the time of course, but it certainly applies to legal matters. Prepare a detailed written outline of the information the legal rep needs. Write down specific details especially:

- dates and times
- names and contact information of key people
- places, maps, GPS co-ordinates
- paperwork, diary entries, letters, email
- phone call information – who to, when and what was discussed
- a timeline of events as they occurred – called 'chronological order'
- Include the people who were present, with contact information for each one if you have it.

It's critical that you write down the specific details and chronological order of when it occurred, so that your legal rep can see the whole picture just as it happened.

Tip 5: Keep on track

Be careful not to talk about things that don't matter. Stick to what is relevant to the issue you're dealing with; otherwise it can quickly become confusing. It can help to write up a formal list of topics, called an **agenda**, and make sure someone keeps the discussion relevant to the agenda.

Keeping to agreed timeframes is important for meetings with the legal rep. However, keep timeframes flexible for Elders and community people as strict deadlines may not suit them. They will often want to think about an issue for a long time before commenting.

Tip 6: Ask for weekly feedback on progress

It is frustrating to play 'phone tennis' when you and your legal rep try to contact each other without success. From the start, ask for weekly feedback on progress either by a phone call at the same time each week or an end-of-week email.



Discuss the following questions with your learning mentor

Is keeping to facts, figures and details something that is easy or hard for you?

What are some ways of keeping records of information that fit with the way you go about your daily work in the community?

The information in this resource provides a starting point for use of traditional customs by Indigenous people in caring for country.

As a land care worker you will be faced with many challenges, problems and difficulties. However there is also the opportunity to experience unexpected rewards and personal satisfaction from helping other people understand and appreciate the unique cultural knowledge of a community and country.

Appendix 1 – Glossary

Term	Meaning
Agenda	A written list of discussion items for a meeting
Colonisation	The forcible takeover of the land of Indigenous peoples and the exploitation of the land and the people, ignoring the rights of indigenous people.
Culture	Traditionally ways of behaving shared by members of a group or community. Includes land, language, ways of living and working, artistic expression, relationships and identity.
Coexistence	Coexistence is the exercise of native title rights alongside the rights of others over the same area of land or waters.
Dreaming	Dreaming can be seen as an embodiment of Aboriginal creation which gives meaning to everything. It establishes the rules governing relationships between the people, the land and all other things.
Elder	An Elder is someone who has gained recognition as a custodian of culture and lore, and has permission to pass on knowledge and beliefs.
Ethics	The study of what is right and what is wrong.
Ethical tradition	Things that a whole group of people believe to be either right or wrong.
Exclusive possession	The right to possess and occupy an area to the exclusion of all others.
Indigenous land use agreement (ILUA)	An ILUA is a voluntary agreement about the use and management of an area of land or waters where native title exists or might exist.
Intellectual Property Rights	The National Copyright Guidelines outline Indigenous Cultural and Intellectual Property Rights (ICIPR): ICIPR means Indigenous people have a legal right to manage and control their heritage.
Kinship	An important part of Indigenous cultures and values. It includes all relationships and being related to and belonging to the land.
Land Rights	A grant of title from a government.
Mining lease	A lease issued by State Governments to allow the right to mine for minerals over a specific area of land.
Native title	Land title which recognises by law that Indigenous people have a connection to an area of country through the existence of traditional laws and customs.
Pastoral lease	Leasehold that allows Crown Land to be used for grazing stock.
Reconciliation	A Commonwealth initiative to promote reconciliation between Indigenous people and the wider community and to redress Indigenous disadvantage.
Sustainable	Lasting, diverse and productive.
Terra nullius	A concept in international law meaning 'a territory belonging to no-one' or 'over which no-one claims ownership'.

Notes