

Native title

I) Establish NT:

To establish NT three elements must be proven:

- (1) An identifiable community or group.
- (2) Traditional connection with or occupation of land (under indigenous people's laws and customs).
- (3) Substantial maintenance of the connection or occupation.

The requirement of exclusivity:

- Traditional occupation may not be exclusive (**Land Rights (Northern Territory) Act 1976**).
- A native title right to fish, hunt and gather on the sea was established without the exclusive right requirement (**Commonwealth v Yarmirr**).

* s.223(i) Native Title Act 1993:

(a) Rights and interests held under traditional customs:

- The rights and interests emerged prior sovereignty and continued in a manner substantially uninterrupted.

De Rose case: A group of indigenous people claimed native title over De Rose Hill Station in the 'Western Desert' region of northwest South Australia. The Second Respondents [the Fullers] held pastoral leases. They claimed that under traditional arrangement, they were the owners of the claim area. They said that under their traditional laws and customs, they have rights and responsibilities in the area relating to Dreamtime stories and ritual knowledge. One claimant, Peter De Rose, was said to be the spiritual leader. He claimed he was born in the area around 1949, and that he lived there until 1978, leaving upon the death of his brother. He occasionally returned to hunt.

Held: **Traditional**

S 223(1)(a): The subsection does not require continuing physical connection (occupation or use) of the land, connection is dealt with in s 223(1)(b), and that section also doesn't require a physical connection but rather one through laws and custom.

Rather, the 'traditional' aspect means that "the community or group must show that it has acknowledged and observed those traditional laws and customs that recognise them as possessing rights and interest in relation to the claimed land or waters."

This does not require the claimants to prove that they continuously discharged all of their responsibilities under the traditional laws and customs.

However, there could be particular responsibilities required in their traditional laws and customs that they must discharge or otherwise fail to satisfy **s 223(1)(a)**.

Yanner v Eaton (1999):

(b) Rights and interests have connection to land or water:

- Physical connection is not needed.