

# Queensland's guide to implementing section 47C of the *Native Title Act 1993 (Cth)*

## Introduction

Section 47C (s. 47C) of the *Native Title Act 1993 (Cth)* (the NTA) allows the Commonwealth, State and Territory Governments to enter into written agreements with native title parties to disregard the prior extinguishment of native title rights and interests in relation to 'park areas'.

Section 47C recognises that 'park areas' (onshore areas of State land where the land is set aside for a purpose that includes preserving the natural environment) hold significant cultural values for First Nations peoples.

The Queensland Government is committed to protecting these cultural values as well as the natural values of Queensland by working with the Traditional Owners of Country. This includes by recognising their native title rights and interests, while ensuring the continuation of other interests in and uses of Queensland's 'park areas'.

Section 47C can be applied to new or existing native title claims or post determination of native title, which may require a variation of an existing determination.

This guide sets out the approach to s. 47C in Queensland, outlining the 'park areas' in scope and policy positions that inform s. 47C agreement making, with the overall aim of supporting native title recognition and the efficient and fair resolution of native title matters for First Nations peoples in Queensland.

## How does s. 47C work?

Disregarding extinguishment is not new under the NTA as it already provides for extinguishment to be disregarded under other arrangements as part of what is known as the 'section 47 suite'. Section 47C however, extends the areas over which extinguishment of native title can be disregarded to 'park areas'. Unlike other provisions in the section 47 suite, it can only be applied with the written agreement of the government responsible for the applicable 'park areas' and the relevant native title party. It also enables extinguishment of native title rights and interests caused by the construction or establishment of public works in 'park areas' to be disregarded, provided this is specified in a s. 47C agreement.

Before any s. 47C agreement can be finalised, the NTA requires 'reasonable' public notification of a proposed agreement for no less than a three-month period, where interested persons are provided the opportunity to comment. Refer to Figure 1 for an overview of the process.

A s. 47C agreement only takes effect upon a determination of native title by the Federal Court. The recognition of native title following a s. 47C agreement will not affect the validity of the 'park area', nor affect the rights and interests of existing interest holders. Existing public access to a s. 47C 'agreement area' is also retained.



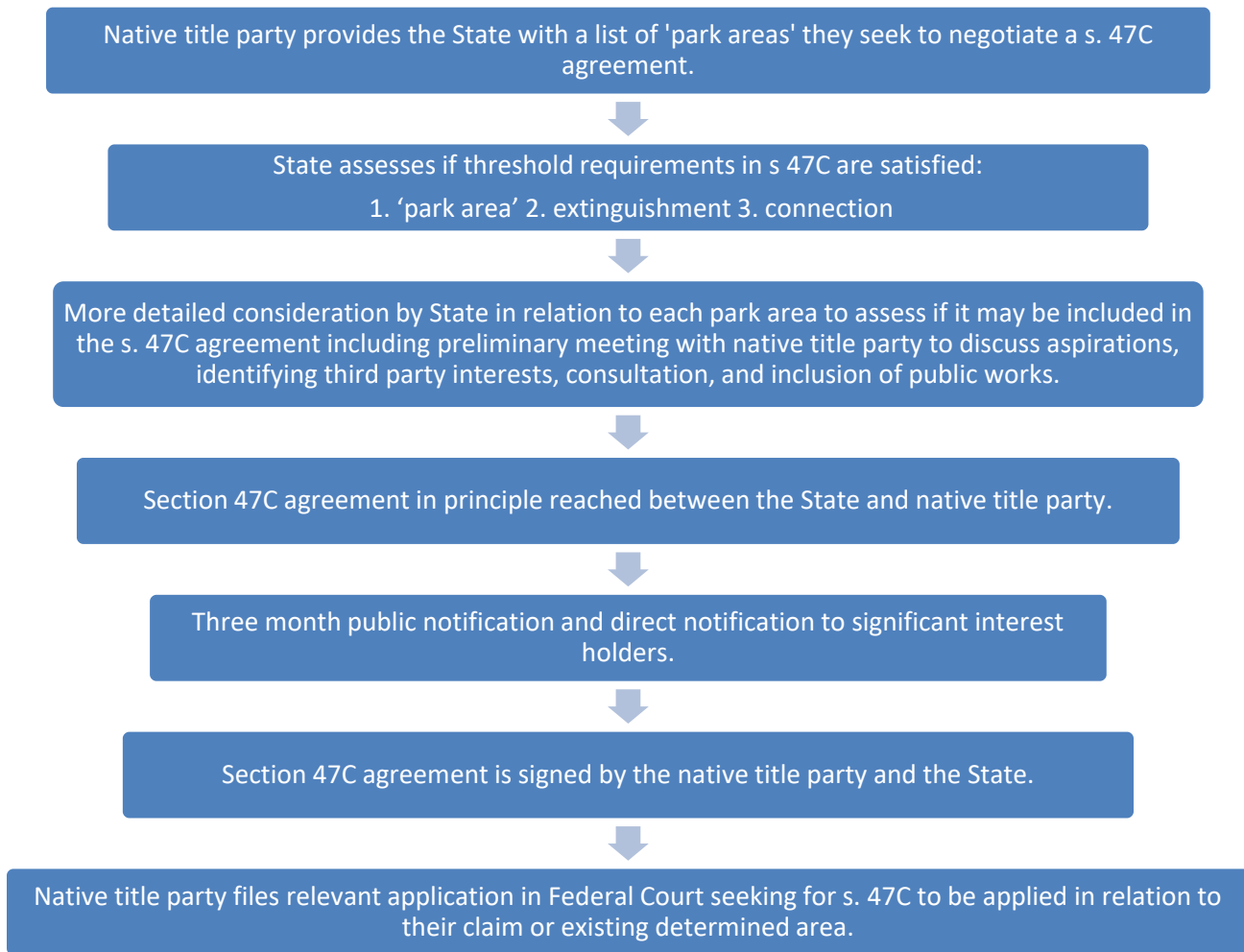


Figure 1 - Outline of s 47C process

## Queensland's 'park areas'

Under s. 47C, 'park areas' are onshore areas and are defined as State land set aside, or in which an interest is granted or vested, for purposes that include the preservation of the natural environment.

In Queensland, 'park areas' may include:

- national parks (scientific), national parks, conservation parks, resources reserves, and forest reserves dedicated under the *Nature Conservation Act 1992 (NCA)*
- protected areas dedicated over Aboriginal or Torres Strait Island freehold where other sections of the 47 suite do not apply
- nature refuges, special wildlife reserves and coordinated conservation areas over State land (generally excluding leased land held by private landholders)
- State forests dedicated under the *Forestry Act 1959* (except for those areas declared as State plantation forest) where evidence shows that the State forest has been set aside for purposes including environmental preservation
- reserves under the *Land Act 1994*, where the purposes of the reserve can be described as including preservation of the natural environment and/or the natural values of the land have been maintained through the land having been reserved.

## Queensland's approach to s. 47C

The Queensland Government supports a case-by-case approach to consideration and application of s. 47C to 'park areas' in Queensland to enable broader recognition of native title in line with its commitment to reframe relationships with First Nations peoples.

Queensland will consider the application of s. 47C in response to a request from a native title party or may raise the matter proactively during discussions about other native title matters; and will rely on existing connection material to support a request, provided that connection material relates to the park areas in question.

To ensure that all parties' interests in Queensland's 'park areas' are properly considered, the case-by-case approach to negotiating an application of s. 47C will be undertaken, based on an analysis of each of the 'park areas' included in a s. 47C application. Once this process is complete, an agreement area can be proposed.

The analysis of 'park areas' will include:

- factoring in the views of state government agencies and third-party land managers (e.g. local government trustees) or agencies/parties who hold an interest in the 'park area'
- future act processes that may be required following a determination of native title applying s. 47C
- existing and known proposed development for the 'park area' and current uses of the area
- approvals in place to freehold the area.

## Process for s. 47C negotiations

The Department of Resources, as the lead agency for native title in Queensland and administrator of the *Land Act 1994*, and the Department of Environment, Science and Innovation as the agency responsible for Queensland's protected areas, will be the key agreement making agencies for s. 47C agreements. Other State agencies may need to be involved where they have a particular interest in the park area/s or public works relevant to a s. 47C application.

## Frequently asked questions

### Native title parties

#### **Do we need to provide the State with a list of areas considered to be park areas when making our request?**

Yes. As s. 47C is by agreement, the native title party will need to provide the State with a list of areas, including lot and plan if known, over which they seek to have s. 47C applied.

The State will then need to consider those areas to ensure each area meets the requirements of s. 47C and to consider other matters such as third-party interests. For example, where a request to apply s. 47C includes a request for a park area where trustee arrangements are in place, the State will consult with the trustee to discuss any relevant considerations before its inclusion in a proposed s. 47C agreement.

The State may not be able to agree to the full application of s. 47C in all cases.

#### **Can we request that s. 47C be applied to public works?**

Yes. If you would like to have the extinguishing effect of public works disregarded, please make that clear when providing the State with the list of proposed park areas.

Where a request to apply s. 47C includes a request to disregard extinguishment relating to public works, the State will consult with the owner and/or operator of the public works before the s. 47C agreement can be finalised.

#### **Does the s. 47C agreement need to be a registered Indigenous Land Use Agreement?**

No. The NTA does not set out any specific requirements for a s. 47C agreement, other than it be in writing. Section 47C agreements may be a stand-alone short form agreement, signed by representatives of both the native title party and the State, and will need to accompany a claimant application or revised native title determination application.

If required, there may also be a need to resolve other native title matters, such as the future validity of future acts, which may result in a s. 47C agreement forming part of broader negotiations towards an Indigenous Land Use Agreement.

### **In what circumstances can s. 47C not be sought or applied?**

Section 47C cannot be sought or applied where native title has been determined not to exist or insufficient connection evidence exists to support a determination that native title exists, where native title has been surrendered by agreement, where native title has been compulsorily acquired, or where an area is subject to competing native title claims (until these are resolved by the Court).

### **Can exclusive native title rights and interests be recognised where s. 47C applies?**

Yes, however connection evidence must support the recognition of these rights and interests.

### **Do we need s. 47C to discuss partnership opportunities on protected areas?**

No. The Department of Environment, Science and Innovation is committed to working in partnership with First Nations peoples to care for and look after Country regardless of a determination of native title and welcomes discussions with the First Nations peoples who speak for their Country. Therefore, while it may be the preference of native title claimants or holders, it is not necessary to await a s. 47C agreement to discuss partnership opportunities with Queensland Parks & Wildlife Service and Partnerships (QPWS&P).

## **Other stakeholders and the community**

### **Will I still be able to access a park area, e.g. a national park, if it is included in a s. 47C agreement?**

Yes. If the park area was publicly accessible before the s. 47C agreement, it will remain so after the application of s. 47C.

### **Can a park area still be managed and used for its purpose?**

Yes. A park area will still be able to be managed and used for its purpose, subject to any relevant future act requirements under the Native Title Act.

### **I am a trustee of a 'park area', will my views be sought before the State agrees to s. 47C?**

Yes. Your views will be sought by the State for s. 47C application, and you will have the opportunity to put any relevant considerations before the State which will be factored into whether the State proposes/agrees to apply s. 47C over the relevant park area. Any position seeking to not apply s. 47C must be reasonably justified with respect to ongoing management and use as well as human rights considerations under the *Human Rights Act 2019*.

### **I am a lessee or hold another type of interest on the 'park area', is my lease or other interest impacted by the s. 47C agreement?**

No. You will still be able to exercise and enjoy the rights under your existing lease or other interest if s. 47C is applied to the park area on which your lease or interest is located.

### **Will I have a chance to make a submission in relation to s. 47C being applied to a 'park area'?**

Yes. Any holder of an interest or member of the public may make a submission to the State during the three-month notification period about their concerns regarding the application of s. 47C to a particular park area. Proposed agreements will be notified on the Department of Resources and the Department of Environment, Science and Innovation websites, and local newspaper advertisements will also be placed.

The State intends that identified third-party land managers and interest holding agencies holding significant or long-term interests would be contacted prior to a decision to include a park area into a proposed s. 47C agreement to provide an opportunity for reasonable considerations to be raised with the decision-making agency.

### **Where can I go for further information?**

For more information, visit the Queensland Government website at [www.qld.gov.au](http://www.qld.gov.au) or contact the Department of Resources by emailing [ntclaimsres@resources.qld.gov.au](mailto:ntclaimsres@resources.qld.gov.au).