Implementation Standard for Native Title Assessment

1. Purpose
This implementation standard identifies the minimum requirements and responsibilities of individual positions for carrying out native title assessments on land held by or on behalf of the Department of Health. Compliance with the standard will ensure a consistent approach that meets the requirements of the Native Title Act 1993 (Cwth) and the Queensland Government Native Title Work Procedures.

2. Scope
This implementation standard applies to all Department of Health employees and contracted staff (permanent, temporary and casual) employed in the department's corporate divisions and commercialised business units involved in dealings relating to land held by or on behalf of the Department of Health.

3. Supporting documents
Authorising Policy and Standard/s:

Forms and Templates:
- Native Title Enquiry Form (Appendix 1)

All Department of Health forms and templates are available from HIB_Enquiries@health.qld.gov.au.

4. Related documents
- Native Title Act 1993 (Cth)
- Native Title Amendment Act 2007 (Cth)
- Native Title (Technical Amendments) Act 2007 (Cth)
- Native Title (Queensland) Act 1993 (Qld)
5. Requirements

5.1 Initiating a Request

5.1.1 Native title shall be assessed for any dealings for land held by or on behalf of the Department of Health, or any statutory body administered by the department. This applies to all Department of Health owned land as well as land on which Department of Health property interests are located or are to be located, and is not limited to those sites over which a native title claim has been lodged, nor is it limited to reserve land. Examples of dealings that require formal native title assessment include:

- acquisition/purchase of land
- disposal/sale of land
- subdivision of land
- conversion of title to land (e.g. reserve to freehold)
- granting of a lease, license or permit to enter land (e.g. Department of Health leasing to another party)
- extension of an existing building
- redevelopment of a hospital site
- building of a new structure
- fencing where previously unfenced
- clearing or excavation of a site.

5.1.2 Exemptions to this requirement include the following property dealings:

- maintenance of existing valid structures
- creation or maintenance of a fire break to protect life, property or the environment
- any emergency action required to protect life, property or the environment
renewal of valid tenures, but only on the same terms and conditions and in certain limited circumstances:

- where the renewal creates an interest in:
  - the same person
  - another person who has acquired the interests of the first person (by assignment, succession or otherwise) and
  - in relation to the whole part of the land or waters to which the earlier act relates and
- where the renewal commences before or immediately after the interests created by the earlier dealing cease and
- where the renewal allows activities of a similar kind to those permitted by the earlier dealing.

5.1.3 If an officer is unsure whether or not a dealing requires native title assessment, they shall seek advice from the Native Title Contact Officer (NTCO), Property Services (PS), Asset and Property Services (APS), Health Infrastructure Branch (HIB), System Support Services (SSS).

5.1.4 In line with the Queensland Government Native Title Work Procedures, the NTCO is the departmental contact point for all matters relating to native title.

5.1.5 Failure to include the consideration of native title in a decision may result in the officer concerned being held personally liable.

5.1.6 Assessment of native title shall be requested before a dealing is finalised and before any other approvals are sought. However, it cannot be assumed that because other approvals have been granted that native title has been assessed, or that if a previous assessment has been made, that it is correct or remains valid.

5.1.7 Staff responsible for individual dealings shall initiate the native title assessment process by forwarding a Native Title Enquiry Form (Attachment 1) to the NTCO.

5.2 Processing the request

5.2.1 On receipt of a Native Title Enquiry Form, the NTCO shall undertake a preliminary assessment.

5.2.2 If the preliminary assessment reveals native title has been extinguished, the NTCO shall provide indicative advice accordingly to the requesting officer.

5.2.3 If native title has not been extinguished, the NTCO shall then undertake a formal native title assessment, in accordance with the provisions of the Queensland Government Native Title Work Procedures.

5.2.4 In the course of the assessment process, particularly in relation to complex cases, the NTCO may seek advice from the Aboriginal and Torres Strait Islander Land Service, Department of Natural Resources and Mines, in line
with the provisions of the Queensland Government Native Title Work Procedures.

5.2.5 On completion of the assessment, the NTCO shall make a decision that native title either has or has not been cleared, shall document that decision on the Native Title Assessment Form (Annexure 7.1, State Government Native Title Work Procedures) which is returned to the Department of Natural Resources and Mines, and shall recommend that decision to the Manager, PS, APS, HIB, SSS, for endorsement.

5.3 Decision

5.3.1 If an assessment is made that native title has been cleared, the Manager, PS, APS, shall inform the requesting officer accordingly and the dealing may proceed.

5.3.2 If an assessment is made that native title has not been cleared, the Manager, PS, APS, shall inform the requesting officer accordingly and will provide advice regarding alternative means of proceeding.

5.3.3 Alternatives may include undertaking a notification process or negotiating an Indigenous Land Use Agreement, in accordance with the Queensland Government Native Title Work Procedures, which will enable the relevant native title parties to be afforded procedural rights. The proposed dealing cannot proceed until native title is addressed through one or other of these processes. The NTCO shall provide advice throughout the process.

6. Review

This Standard is due for review on: 26 June 2014

Date of Last Review: 26 June 2014

Supersedes: Native Title Work Procedures v_1.3

7. Business Area Contact

Senior Director, Asset and Property Services, Health Infrastructure Branch, System Support Services Division

8. Responsibilities

<table>
<thead>
<tr>
<th>Position</th>
<th>Responsibility</th>
<th>Audit criteria</th>
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| Health Service Chief Executive (or their delegate) | • Identify dealings requiring native title assessment  
• Approve all requests for assessment for submission to Property Services. | Native Title Enquiry Form completed for each dealing that has native title implications. |
| Chief Health Infrastructure Officer, HIB, SSS | • Policy Custodian | Ensure Standard is reviewed every two years. |
# Definitions of terms used in the policy and supporting documents

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition / Explanation / Details</th>
<th>Source</th>
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<tbody>
<tr>
<td>Dealing</td>
<td>A ‘future act’ as defined by the Native Title Act 1993, i.e. a grant of an interest, the doing of an activity or carrying out development on land/waters that affects native title (i.e. interferes with its enjoyment or exercise).</td>
<td>State Government Native Title Work Procedures</td>
</tr>
<tr>
<td>Extinguishment</td>
<td>This term is used when Australian law does not recognise native title rights and interests because some things governments did, or allowed others to do, in the past have made recognition legally impossible.</td>
<td>National Native Title Tribunal</td>
</tr>
<tr>
<td>Native title</td>
<td>The communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders in relation to land and waters, possessed under traditional law and custom, by which those people have a connection with an area which is recognised under Australian law.</td>
<td>National Native Title Tribunal</td>
</tr>
<tr>
<td>Procedural rights</td>
<td>The Native Title Act 1993 (Cwth) gives native title holders and registered native title claimants procedural rights in relation to certain future acts. Depending on the type of future act these rights range from being notified, to being given an opportunity to comment, through to the right to negotiate, to object and to be heard by an independent umpire. For some future acts, for example the renewal of certain interests over the same area on the same terms, there are no procedural rights.</td>
<td>National Native Title Tribunal</td>
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10. Approval and Implementation

Policy Custodian:
Chief Health Infrastructure Officer, Health Infrastructure Branch, System Support Services Division

Responsible Executive Team Member:
Deputy Director-General, System Support Services Division

Approving Officer:
Deputy Director-General, System Support Services Division

Approval date: 26 June 2012
Effective from: 26 June 2012

Version Control

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<th>Prepared by</th>
<th>Comments</th>
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<td>1.0</td>
<td>11/02/2014</td>
<td>Helen Sotiris</td>
<td>minor update to include new reporting structure</td>
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Appendix 1: Native Title Enquiry Form

NATIVE TITLE ENQUIRY FORM
APPLICATION FOR DECISION IN ACCORDANCE WITH
NATIVE TITLE WORK PROCEDURES

FAX/EMAIL TO: Native Title Contact Officer
Property Services, Asset and Property Services,
System Support Services, Department of Health
FAX NUMBER: 07 3006 2769 OR EMAIL: neil_payne@health.qld.gov.au

PROPERTY NAME: ..........................................................................................................
PROPERTY ADDRESS: ...................................................................................................

REAL PROPERTY DESCRIPTION:
LOT ................................................................ PLAN ..................................................
(Attach site plan of property, including proposed dealing)

REASON FOR REQUEST (include details of dealing/activity eg. hospital redevelopment, new
car park, leasing of site, proposed lessee/lessor etc):
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
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ANTICIPATED START DATE OF PROPOSED DEALING/ACTIVITY: ..................
REQUESTING OFFICER NAME: ..................................................................................
POSITION: ..................................................................................................................
LOCATION: ..................................................................................................................
CONTACT NO.: ...............................................................................................................
EMAIL: ..........................................................................................................................
Appendix 2: Dealings that may proceed without assessment

Examples of dealings that may proceed without native title assessment:

1) Maintenance of existing valid structures;
2) The creation or maintenance of a fire break to protect life, property or the environment;
3) Any emergency action required to protect life, property or the environment;
4) Renewal of valid tenures but only on the same terms and conditions and under the following circumstances:
   a. where the renewal creates an interest in:
      - the same person
      - another person who has acquired the interests of the first person (by assignment, succession or otherwise); and
      - in relation to the whole part of the land or waters to which the earlier act relates; AND
   b. where the renewal commences before or immediately after the interests created by the earlier dealing cease; AND
   c. where the renewal allows activities of a similar kind to those permitted by the earlier dealing.