ANNEXURE A

**Northern Territory**

**Land tenure snapshot**

* 22.9 % of the Northern Territory is covered by native title determinations.
* 46.2 % of the Northern Territory is controlled by Indigenous Australians under the *Aboriginal Land Rights (Northern Territory) Act.[[1]](#footnote-1)*

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) | Provides for the grant of land to Aboriginal land trusts in the Northern Territory. | Aboriginal land trusts - consisting of Aboriginal people resident in the land council region. | Inalienable freehold title. | No. | Yes for leasehold interest. |

 **Purpose**

Land granted under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (NT ALRA) (Aboriginal freehold) is one of the strongest forms of Indigenous land title in the world, delivering Indigenous land owners a high level of control over access and resource use by others. More about the NT ALRA can be found in the body of Australia’s submission to EMRIP on the Right to Land (the submission).

**Claim process**

Details of the NT ALRA claims process can be found in the body of the submission.

**Sale and leasing of Aboriginal land**

Details on the leasing of NT ALRA land can be found in the body of the submission.

The NT ALRA enabled Crown land to be handed back to many Aboriginal people in the Northern Territory, however, those whose country was under a pastoral lease were left out. The *Associations Act* (NT) allows excisions from pastoral leases to be granted as Community Living Areas (CLA) to Aboriginal land holding entities. Long-term leasing of these areas is possible, with the relevant Northern Territory Minister’s approval required for leases longer than ten years.

Town camps are areas close to urban centres designated (leased-in-perpetuity) for Aboriginal communal living, and are often held under the *Crown Lands Act* (NT) (Crown Lands Act) and *Special Purpose Lease Act* (NT) (SPLA).

**Native title in the Northern Territory**

Native title can be determined on NT ALRA land. Section 210 of the *Native Title Act 1993* (Cth) (NTA) provides that native title does not affect the operation of beneficial land rights laws, including the NT ALRA. To date, however, native title claims have been made largely outside NT ALRA land, in particular over pastoral leases.

As of December 2019, there were 106 determined native title claimant applications in the Northern Territory and 35 active native title claims.

**Other Northern Territory land legislation**

The *Northern Territory Aboriginal Sacred Sites Act 1989* (Sacred Sites Act) and the *Aboriginal Heritage Act 1972 (*Heritage Act)furtherstrengthen the protection of Aboriginal land and culture in the Northern Territory. All sacred sites in the Northern Territory are protected by the Sacred Sites Act. The Act is administered by the Aboriginal Areas Protected Authority (AAPA). Anyone proposing to use or work on land in the NT may apply to AAPA for an Authority Certificate to ensure the adequate protection of sacred sites during their proposed activities. The Heritage Act complements the Sacred Sites Act by fulfilling the role of heritage conservation, including the conservation of a diverse range of Aboriginal heritage places which are not of a sacred nature.

**New South Wales**

**Land tenure snapshot**

* 17.0 % of New South Wales is covered by native title determinations.
* 0.2% of New South Wales is owned or controlled by Indigenous Australians under the statutory land regime.[[2]](#footnote-2)

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Land Rights Act 1983* | Provides for the grant of certain Crown land to local aboriginal land councils. | Local aboriginal land councils or the NSW Aboriginal Land Council (NSWALC). | Freehold (except Western Division - leasehold). | Yes, subject to NSWALC approval. | Yes, subject to NSWALC approval. |

**Purpose**

The *Aboriginal Land Rights Act 1983* (NSW)(NSW ALRA) provides a mechanism for compensating the Aboriginal people of New South Wales for the loss of their land by enabling Aboriginal Land Councils to lodge claims for certain Crown lands.

The NSW ALRA also provides for financial independence by the requirement of the state to pay 7.5% of state land tax for 15 years upon commencement of the NSW ALRA. Further it is required that half this money be invested for the future. The assets of the Aboriginal Land Council are now valued at around $676 million.[[3]](#footnote-3)

**Claim process**

A network of democratically elected Local Aboriginal Land Councils (LALCs) were created under NSW ALRA to acquire and manage land as an economic base for Aboriginal communities. This includes Crown lands that are not needed or likely to not be needed as residential lands or for an essential public purpose, and are not the subject of a claimant application or a positive determination under the NTA*.* Land that is privately owned cannot be claimed.

The Land Rights Unit at the New South Wales Aboriginal Land Council (NSWALC) assists groups in ascertaining whether land is claimable under the scheme. The NSWALC represents the 120 local Aboriginal land councils also established under the NSW ALRA. Aboriginal Land Claims are lodged with the Registrar of the NSW ALRA and are determined by the Minister/s administering the *Crown Lands Act 1989* (NSW). If the land is claimable Crown land, it must be granted to an Aboriginal Land Council, generally as freehold title. Traditional connection to land does not need to be established for land to be granted to Aboriginal Land Councils under the NSW ALRA. This is unique to New South Wales.

Alternatively, NSW ALRA allows the New South Wales Government and LALCs to enter into voluntary and legally binding agreements to resolve land claims, reducing the need for costly and lengthy land claim determinations. These are called Aboriginal Land Agreements (ALAs). Importantly, ALAs can settle multiple land claims at the same time, rather than rely on the original process of determining claims one at a time. These agreements can also include financial payments, and land swaps that may include transfers of unused Crown land that has not yet been claimed.

**Sale and leasing of Aboriginal land**

If a LALC wishes to sell land, it must get a determination under the NTA that native title does not exist in the area. While most NSW ALRA land is granted as unrestricted freehold the Act also allows for long-term leasing of LALC land and in the interior land ­– known as the Western Division – it allows for leasing-in-perpetuity.

The NSW ALRA also allows existing and proposed national parks, sites, and reserves to be granted to LALCs as inalienable freehold, on the condition that the land is immediately leased back to the New South Wales Government. These parks are jointly managed by Aboriginal land owners and the New South Wales Government.

**Native title in New South Wales**

Land rights and native title may co-exist on land. Whether or not native title exists over land held by Aboriginal Land Councils will depend on a number of factors. These include how the LALC came to own the land (as a result of a successful land claim or by some other means), whether native title had previously been extinguished and, if the land is held by the LALC as the result of a successful land claim under the NSW ALRA, the date upon which the land claim was lodged. For example, the granting of an Aboriginal land claim lodged after 1994 (the NSW ALRA was amended on 28 November 1994 to take into account the new Australian Government native title regime) will not affect any native title rights. Further, for land where native title has previously been extinguished, the Federal Court can disregard the previous extinguishment in some cases. However, the native title that is recognised in these cases will not restrict the LALCs from dealing with their land.

As of December 2019, there were 19 native title claimant determinations in NSW and also 19 active claimant applications.

**Queensland**

**Land tenure snapshot**

* 32.6% of Queensland is covered by native title determinations.
* 4.0 % of Queensland is controlled by Indigenous Australians under the statutory land regime.[[4]](#footnote-4)

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Land Act 1991* (ALA)*Torres Strait Islander Act 1991* (TSILA) | Provides for the grant of land on mainland Queensland and the Torres Strait for the benefit of a broader Indigenous group. | *ALA* – Trustees or Aboriginal people or RNTBCs (native title corporation).*TSILA* – Trustees, Torres Strait Islander people or RNTBCs (native title corporation). | Inalienable freehold or leasehold. | No. | Yes. |
| *Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Act 2014* | This Act amended the ALA and TSILA to provide the option of converting town areas of Aboriginal and Torres Strait Islander communities to ordinary freehold land. | Specified Aboriginal or Torres Strait Islander people. | Freehold. | Yes, subject to conditions. | Yes. |

**Purpose**

In Queensland, the *Aboriginal Land Act 1991* (Qld)(QLD ALA) and the *Torres Strait Islander Act 1991* (Qld)(TSILA) create a scheme for the transfer of inalienable freehold title to Land Trusts andAboriginal and Torres Strait Islander corporations for the benefit of a broader Indigenous group. There are five types of land that can be transferred – deed of grant in trust land (DOGIT), Aboriginal reserve land, Torres Strait Islander reserve land, available state land declared to be transferable land and national parks in the Cape York Peninsula region. More than 5.7 million hectares of land have been transferred.

**Claim process**

The QLD ALA established the Aboriginal Land Tribunal to hear claims for vacant Crown land (which is gazetted as claimable land). No new claims have been received by the Tribunal since 22 December 2006 as section 60 of the QLD ALA provides that claims needed to be made within fifteen years of commencement of the Act.

**Sale and leasing of Aboriginal land**

Land that is acquired under QLD ALA and TSILA is transferable and may be transferred to a new trustee. This transferred land tenure is known as either Aboriginal freehold or Torres Strait Islander freehold and has some of the characteristics of ordinary freehold. However, this type of freehold land cannot be sold and is perpetually held in trust for the communal benefit of Aboriginal or Torres Strait Islander inhabitants or for the benefit of native title holders of the land. The QLD ALA and TSILA allow for long-term 99 year (renewable) leasing of Indigenous land in a simplified, flexible framework without Ministerial approvals. These leases are transferable. The QLD ALA and TSILA allow land to be used for economic purposes; however, the resource rights associated with tenure vary from location to location.

The *Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Act 2014* amended QLD ALA and TSILA to provide the option for Queensland’s 34 Aboriginal and Torres Strait Islander communities to obtain ordinary freehold title. It is optional to take up ordinary freehold title in communities. The decision is made by the trustee of the land, in consultation with the community and native title holders. The option of ordinary freehold title is only available to eligible individuals within a community, not corporations or government. Once granted, this freehold land can be mortgaged, sold or gifted, used for commercial purposes or home ownership. The land available for freehold is limited to the town area. Under this Act, which commenced on 1 January 2015, native title must be either surrendered or previously extinguished before freehold will be granted. To date, there has been little interest in pursuing conversion of land to ordinary freehold in most communities.

Under earlier Land Acts, communal tenure could have been granted as a DOGIT. DOGITs are generally former Indigenous reserves granted as inalienable freehold to Indigenous local governments who hold the land on trust for the benefit of Indigenous inhabitants. A DOGIT may be surrendered, cancelled or be compulsorily acquired. Leasing of DOGITs is governed by the QLD ALA or the TSILA. DOGITs are progressively being transferred under the QLD ALA or TSILA. Once transferred, the DOGIT tenure will cease and Aboriginal or Torres Strait Islander inalienable freehold will be created with new trustees, which can include Prescribed Body Corporates (PBCs) or other *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) corporation. Most of the land in the Indigenous townships remains as DOGIT held by the Indigenous councils.

**Native title in Queensland**

The QLD ALA and TSILA were amended in 2011 through the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011* (Qld). The amendments sought to improve the interaction between the land holding acts and the NTA including enabling land to be granted under the Acts to bodies registered under the CATSI Act.In Queensland DOGITs can be transferred to PBCs.

As of December 2019, there were 152 native title claimant determinations in Queensland and 55 active claimant applications.

**South Australia**

**Land tenure snapshot**

* 62.3% of South Australian is covered by native title determinations.
* 21.7% of South Australia is controlled by Indigenous Australians under the statutory land regime.[[5]](#footnote-5)

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Lands Trust Act 2013*First enacted in 1966. | Provides for the grant of land to Aboriginal people in South Australia. | South Australian Aboriginal Lands Trust. | Freehold or leasehold or any other purchased titles. | Yes, but must have support of the Parliament of South Australia. | Yes, subject to conditions. |
| *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981**Maralinga Tjarutja Land Rights Act 1984* | Provides for the respective grants of land in the north‐west and the west of South Australia. | Body corporate. | Inalienable freehold - vested in perpetuity. | No. | Yes, subject to conditions. |

**Purpose**

The *Aboriginal Lands Trust Act* 1966 (SA) (now the *Aboriginal Lands Trust Act 2013)* (SA ALTA)allows for the grant of freehold title to the Aboriginal Land Trust (ALT) on behalf of the Aboriginal people of South Australia. South Australia has also legislated for the return of large areas of the State under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) (APY Act) and the *Maralinga Tjarutja Land Rights Act 1984* (SA) (MT Act).

**Sale and leasing of Aboriginal land**

Under the SA ALTA*,* the ALT leased the land back to Aboriginal communities at nominal rates for 99 years, which is available for repeated renewable periods. The ALT may lease, mortgage or develop trust land. The land vested in the trust can be alienated in some circumstances, in accordance with the SA ALTA. Today, the ALT holds the titles to 65 properties covering well over 500,000 hectares of land in South Australia.[[6]](#footnote-6)

The APY Act grants inalienable freehold title over 103,000 square kilometres in the north-west corner of South Australia. The MT Act grants inalienable freehold title over an area of 80,764 square kilometres in the west of South Australia. Under both the APY and MT Acts, freehold land is vested in a body corporate bound by statutory functions and powers. Leases of variable periods can be granted under the APY and MT Acts. A traditional owner can be granted a lease for any length of time. The Crown can be granted a lease of up to 50 years, and any other party can be granted a lease of up to 10 years (APY Act) or five years (MT Act). None of these leases can be mortgaged.

**Native title in South Australia**

In South Australia the non-extinguishment principle applies to SA ALTA, APY Act and MT Act land unless connection is not proven. The non-extinguishment principle means that an act which would normally wholly or partially extinguish native title does not have that effect. Rather, any inconsistent native title rights and interests are merely suspended while the particular act has effect.

As of December 2019, there were 31 native title claimant determinations in South Australia and 19 active claimant applications.

**Victoria**

**Land tenure snapshot**

* 11.4 % of Victoria is covered by native title determinations.[[7]](#footnote-7)

| **Statute** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- |
| *Traditional Owner Settlement Act 2010* | Traditional owner groups. | Inalienable fee simple or ordinary freehold. | Ordinary freehold - Yes, subject to conditions. | Yes, subject to conditions. |
| *Aboriginal Land Rights Act 1970* | Aboriginal trust consisting of residents. | Perpetual licence to occupy and use land, and estate in fee simple. | No. | Yes, subject to conditions. |
| *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth) | Specified Aboriginal corporations. | Freehold. | No. | Yes. |

**Purpose**

Victoria does not have a unified statutory land claims regime. Victoria has enacted legislation to grant several parcels of specified land to certain Aboriginal trusts or organisations for the benefit of Victorian Aboriginal people. These land grants have been made under Victorian and Commonwealth legislation - *Aboriginal Land Rights Act 1970, Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth), *Aboriginal Land (Northcote Land) Act 1989, Aboriginal Land (Manatunga Land ) Act 1992, Aboriginal Land Act 1991.* The areas subject to the above grants only cover a combined area of 29 square kilometres or 0.013% of the total area of Victoria.

In 2010, the Victorian Government developed an alternate system for recognising the rights of Victorian traditional owners. The Traditional Owner Settlement Act 2010 (Vic) (TOSA) provided for “a recognition and settlement agreement between the State and a traditional owner group entity for an area of public land”.

**Sale and leasing of Aboriginal land**

The *Aboriginal Land Rights Act 1970* (Vic) grants freehold title over the reserve land at Lake Tyers and Framlingham to the Aboriginal communities of Lake Tyers and Framlingham. This land is vested in *fee simple* in the Lake Tyers Aboriginal Trust and the Framlingham Aboriginal Trust retrospectively. Under the Act, these trusts are able to lease areas of land up to a period of 21 years. The trusts can approve longer leases if 75 per cent of voting members approve the lease. The Victorian Government is in the process of reviewing the Act to improve governance, facilitate economic development and enable greater self-determination for the Framlingham and Lake Tyers Aboriginal communities.

***Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth)**

The *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth) was passed by the Australian Government at the request of the Victorian Government. The Act vests freehold title at Lake Coinah in the Kerrup-Jmara Elders Aboriginal Corporation, and Framlingham Forest in the Kirrae Whurrong Aboriginal Corporation. The Aboriginal Corporations are granted full management and control of the land granted to them under the Act.

**Native title in Victoria**

The Victorian Government introduced the *Land Titles Validation Act 1994* (Vic) (LTVA) to validate past acts. The LTVA also confirms the complete extinguishment of native title by previous exclusive possession acts attributable to the state, and the partial extinguishment of native title by previous non-exclusive possession acts attributable to the state. The LTVA confirms ownership by the Crown of natural resources, the right to regulate water flows and existing fishing rights under state law; and public access to waterways, beds and banks of waterways, coastal waters, beaches and public areas. This is not intended to impair or extinguish any native title rights or interests, nor affect any conferral of land or water, or any interests in land or water.

The *Traditional Owner Settlement Act 2010* (Vic) (TOS Act) creates a framework for agreements between traditional owners and the state to resolve issues which may otherwise be dealt with through native title claims. In exchange for a settlement package, a traditional owner group agrees to withdraw any existing native title and compensation applications and not to file any such applications in future. Outcomes are negotiated on a case-by-case basis.

The TOS Act also establishes a land use activity regime which is an alternative to the future acts regime of the NTA and results in a land use activity agreement (LUAA). It provides procedural rights for recognised traditional owner groups over certain activities that occur on public land. A LUAA must be accompanied by an Indigenous land use agreement (ILUA) which provides for the ‘contracting out’ of NTA processes.

As of December 2019, there were seven native title claimant determinations in Victoria and seven active claimant applications.

**Western Australia**

**Land tenure snapshot**

* 66.8 % of Western Australia is covered by native title determinations.
* 9.6% of Western Australia is owned or controlled by Indigenous Australians under the statutory land regime.[[8]](#footnote-8)

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Affairs Planning Authority Act 1972* | Designates reserve land for the ‘use and benefit’ of Aboriginal inhabitants. | Aboriginal Lands Trust. | Crown reserve. | No. | Yes, subject to conditions. |
| *Land Administration Act 1997* | Provides for leases to Aboriginal communities and Aboriginal corporations for pastoral activity and the advancement of Aboriginal persons. | Aboriginal person or approved Aboriginal corporation. | Conditional freehold or lease and Crown reserves. | No. | Yes, subject to conditions. |

**Purpose**

Western Australia does not have a statutory land rights scheme. The *Aboriginal Affairs Planning Authority Act 1972* (WA) has established an extensive number of Aboriginal reserves. Most are controlled, cared for and managed by an Aboriginal Land Trust (ALT) established under the Act. The ALT manages 312 parcels of land including 249 Crown reserves, 50 freehold, 7 general purpose leases and 6 pastoral leases.[[9]](#footnote-9) Some reserves are controlled directly by an Aboriginal Corporation and not the ALT.

**Sale and leasing of Aboriginal land**

The ALT has the power to confer leases over reserves to third parties for a period up to 99 years. These leases must be consistent with the purpose of the reserve, being for the “use and benefit of Aboriginal inhabitants”. There are over 290 existing leasing arrangements which constitute approximately 13 million hectares (or 54 per cent) of the ALT estate.[[10]](#footnote-10) A smaller number of leases have been issued to Aboriginal communities for this purpose under the *Land Administration Act 1997* (WA) (LAA). The LAA also provides for pastoral leases for Aboriginal corporations, as well as perpetual leases with the purpose of the advancement of Aboriginal persons. The LAA does not prevent Aboriginal people from holding ordinary freehold title of their land.

**Native Title in Western Australia**

Aboriginal tenure in Western Australia does not extinguish native title.

As of December 2019, there were 108 native title claimant determinations in Western Australia which include significant areas of exclusive possession in the northern part of the state, and 76 active claimant applications.

**Australian Capital Territory**

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) | Provides for the grant of land in the Jervis Bay Territory to the Wreck Bay Aboriginal Community Council. | Wreck Bay Aboriginal Community Council. | Vested in the council with compulsory lease back to the Australian Government as national park. | No. | Yes. |

**Purpose**

In the Australian Capital Territory, the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) (Land Grant Act)allows for the grant of inalienable freehold title in the Jervis Bay Territory to the Wreck Bay Aboriginal Community Council (WBACC). The Jervis Bay Territory (JBT) is 7400 hectares of land at the southern end of Jervis Bay (surrendered by NSW), administered by the Australian Government as a port and naval base. The laws of the Australian Capital Territory apply in the JBT by virtue of the Jervis Bay Acceptance Act 1915.

**Coverage**

Over 90 per cent of the JBT is Aboriginal land vested in the WBACC. The remaining land (Crown land and private leases) is subject to a land claim initiated by WBACC over 20 years ago. Part of the land claim was resolved in 2018 by the grant of an additional 30 hectares of JBT land.

**Sale and leasing of Aboriginal Land**

Under the Land Grant Act, WBACC is able to lease areas of their land to registered members for domestic purposes (99 year leases) and business purposes (25 year leases), as well as to non‑registered members for domestic or business purposes (15 year leases). Private sale of land is not permitted.

**Native title in the Australian Capital Territory**

In the Australian Capital Territory, any native title rights that exist in the JBT sit suspended while the land is Aboriginal land. There have been five native title claims in the rest of the Australian Capital Territory. However, all have been discontinued, rejected or dismissed. One of the first native title claims in the Australian Capital Territory was discontinued as a result of an agreement reached in 2001, whereby the Australian Capital Territory granted a Special Aboriginal Lease for a period of 99 years over Namadgi National Park. The lease grants Aboriginal groups the right to jointly manage the Park.

There are currently no active native title claimant applications and no native title determinations in the Australian Capital Territory.

**Tasmania**

| **Statute** | **Aim** | **Landowner** | **Form of title** | **Private sale** | **Leasing or subleasing** |
| --- | --- | --- | --- | --- | --- |
| *Aboriginal Lands Act 1995* | Provides for a grant of land for the Aboriginal community in perpetuity by the Aboriginal Land Council of Tasmania. | Aboriginal Land Council of Tasmania. | Inalienable freehold. | No. | Yes. |

**Purpose**

In Tasmania, the *Aboriginal Lands Act 1995* (Tas) created an elected Aboriginal Land Council of Tasmania (ALCT) which allows certain land of significance to Tasmanian Aboriginal people to be held in trust in perpetuity.

**Sale and leasing of Aboriginal Land**

Under the Act, the ALCT is not able to mortgage the land or use it as security for any purpose. However, the ALCT is able to lease areas of land provided that a lease extending beyond three years meets the provisions of the *Land Titles Act 1980* (TAS). The land vested in the Council in perpetuity unusually includes mineral rights except for oil, atomic and geothermal substances.

**Native title in Tasmania**

Native title is not a large part of the legal and policy landscape in Tasmania. In Tasmania, Aboriginal claims to land and waters are managed via the return of land or collaborative management processes.

As of November 2019, five native title applications had been lodged within Tasmania, all have been struck‑out, discontinued or rejected. There are no determinations of native title.

ANNEXURE B

**Native title determinations[[11]](#footnote-11)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Native title does not exist  | Native title exists (exclusive) | Native title exists (non-exclusive) | Native title extinguished | Total landkm sq | Total (% of land mass) |
| Northern Territory  | *913* km sq*0.1 %*  | *8,278* km sq*0.6 %*  | *299,002* km sq*22.2 %*  | *2* km sq*0.0 %*  | *308,195* | *22.9 %* |
| New South Wales | *5,518* km sq*0.7 %*  | *685* km sq*0.1 %*  | *4,136* km sq*0.5 %*  | *125,561* km sq*15.7*  | *135,900* | *17.0 %* |
| Western Australia  | *87,618* km sq*3.5 %* | *942,670* km sq*37.3 %*  | *636,006* km sq*25.2 %*  | *22,171* km sq | *1,688,465* | *66.8 %* |
| Queensland | *71,287* km sq *4.1 %* o | *41,616* km sq*2.4 %*  | *442,371* km sq *25.6 %*  | *7,895* km sq*0.5 %*  | *563,169* | *32.6 %* |
| South Australia | *66,748* km sq*6.8 %*  | *6,092* km sq *0.6 %*  | *537,619* km sq *54.6 %*  | *2,887* km sq *0.3 %*  | *613,346* | *62.3 %* |
| Victoria | *11,019* km sq*4.8 %*  |  | *14,905* km sq *6.6 %*  |  | *25,924* | *11.4 %* |
| Total | ***243,103*** km sq***3.2 %***  | ***999,341*** km sq ***13.0 %***  | ***1,934,039*** km sq***25.2 %***  | ***158,516*** km sq***2.1 %***  | ***3,334,999*** | ***43.4 %*** |

 **Determination outcomes area footprint by State and Territory**



ANNEXURE C

**Statutory Heritage Protection**

Australia’s state governments are largely responsible for the protection of Indigenous heritage places. Every state has laws that protect various types of Indigenous heritage.

|  |  |  |
| --- | --- | --- |
| **Jurisdiction** | **Principal Indigenous heritage legislation** | **Aim** |
| National  | Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP) (Cth)  | The ATSIHP Act allows the responsible Minister, on the application of an Aboriginal person or group of persons, to make a declaration to protect an area, object or class of objects from a threat of injury or desecration. |
| Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) | Establishes the National Heritage List, which includes natural, Indigenous and historic places that are of outstanding heritage value to the nation. Under the EPBC Act there are penalties for anyone who takes an action that has or will have a significant impact on the Indigenous heritage values of a place that is recognised in the National Heritage List. |
| Australian Capital Territory | Heritage Act 2004  | All Aboriginal places and objects in the Australian Capital Territory are protected under the Act and are recorded in a centralised database maintained by Australian Capital Territory Heritage.  |
| New South Wales | Heritage Act 1977National Parks and Wildlife Act 1974Aboriginal Land Rights Act 1983National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996 | The New South Wales Government is currently reforming the way Aboriginal cultural heritage is conserved and managed in New South Wales. A consultation draft Aboriginal Cultural Heritage Bill was released for public comment in February 2018. |
| Northern Territory | Northern Territory Aboriginal Sacred Sites Act 1989Heritage Act 2011  | All sacred sites in the Northern Territory are protected by the Sacred Sites Act. The Act is administer by the Aboriginal Areas Protected Authority.The Heritage Act complements the Sacred Sites Act by fulfilling the role of heritage conservation, including the conservation of a diverse range of Aboriginal heritage places which are not of a sacred nature.  |
| Queensland | Aboriginal Cultural Heritage Act 2003Torres Strait Islander Cultural Heritage Act 2003 | The Act extends legal protection to any area or object that is significant, or is evidence of historic or archaeological significance, to Aboriginal People throughout the state of Queensland. These areas and objects are known as ‘cultural heritage’. Cultural heritage matters are managed by the registered cultural heritage body for the relevant area, often the native title holder or the registered native title claim group.The Queensland Government undertook a public consultation process on the two Acts and is currently considering the submissions prior to making a decision on whether to proceed with a review of the Acts. |
| South Australia | Aboriginal Heritage Act 1988 | The Act establishes an Aboriginal Heritage Committee comprised of Aboriginal people from all parts of the state. This Committee advises the Minister on making entries in central archives, on measures that should be taken to protect or preserve Aboriginal sites, objects or remains, on the appointment of inspectors and on the administration of the Act and the protection and preservation of Aboriginal heritage. |
| Tasmania | Aboriginal Heritage Act 1975 | The Act established the Aboriginal Heritage Council (AHA). The AHA is comprised of a select group of Aboriginal persons whose role is to advise the Minister on Aboriginal heritage matters. The Act establishes Guidelines for people and businesses to minimise *potential harm to Aboriginal heritage.* The Act was amended in 2017. A full review of the Act is currently underway as required by the 2017 amendments. |
| Victoria | Aboriginal Heritage Act 2006*Aboriginal Heritage Amendment Act 2016*Heritage Act 2017 | The Act provides protection for all Aboriginal places, objects and human remains in Victoria regardless of their inclusion in the Victorian Aboriginal Heritage Register or land tenure.The Aboriginal Heritage Regulations 2007 give effect to the Act. The Regulations set out the circumstances in which a Cultural Heritage Management Plan is required to be prepared.The Act facilitates the appointment of Registered Aboriginal Parties (RAPs) to areas where traditional owners were able to demonstrate continuous and historical links to country. The RAPs are the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage.The Act was amended in 2016 through the Aboriginal Heritage Amendment Act 2016 to include intangible Aboriginal Heritage, enhance Aboriginal cultural heritage management systems and establish new offences. |
| Western Australia  | Aboriginal Heritage Act 1972 | The Act protects all Aboriginal heritage sites in Western Australia, whether or not they are registered with the department.Consent is required from the Minister for Aboriginal Affairs for any activity which will negatively impact Aboriginal heritage sites. Under the AHA, Aboriginal sites of outstanding importance may be declared Protected Areas.The WA Government is currently undertaking a review of the Act. |

1. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-1)
2. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-2)
3. <http://alc.org.au/media/141430/nswalc%20annual%20report%202017-2018.pdf> [↑](#footnote-ref-3)
4. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-4)
5. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-5)
6. As at 2016 <https://alt.sa.gov.au/wp/index.php/about-us/history-of-the-trust/> [↑](#footnote-ref-6)
7. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-7)
8. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-8)
9. <https://www.dplh.wa.gov.au/alt> [↑](#footnote-ref-9)
10. <https://www.dplh.wa.gov.au/alt> [↑](#footnote-ref-10)
11. <http://www.nntt.gov.au/assistance/Geospatial/Pages/DataDownload.aspx> [↑](#footnote-ref-11)