Submission of the National Native Title Tribunal

Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia

1. On Friday 15 February 2019 National Native Title Tribunal (the Tribunal) member James McNamara appeared at a public hearing before the Joint Standing Committee on Northern Australia. On Thursday 21 February 2019 the Inquiry Secretary, on behalf of the Committee, requested answers to four questions. The Tribunal's response to the four questions appear in Part 1 of this submission. At the public hearing Senator Dodson asked a further question which was taken on notice. That question is also answered in Part 1. Otherwise, this submission expands upon the evidence presented by Member McNamara, addresses the terms of reference, and more fully answers other matters which arose in the public hearing.

2. The Tribunal notes that the acronyms PBC and RNTBC are often used interchangeably, despite the *Native Title Act 1993 (Cth)* (the Act) dealing with them separately. In the context of the public hearing and in this submission, any and all references to PBC (Prescribed Body Corporate) is intended to mean RNTBC (Registered Native Title Body Corporate), which is the name of the PBC entered on to the National Native Title Register.

3. The Tribunal also notes that since the public hearing the *Native Title Legislation Amendment Bill 2019* was introduced in the House of Representatives on 21 February 2019. The second reading debate was adjourned to the next sitting.

4. The Tribunal is available to reappear and/or provide further written material should the Committee request.

5. This submission is in four parts as follows:

Part 1

Question 1.

In your view, how could the regulatory and/or legislative aspects of native title be improved to support the economic development of Traditional Owners?

6. The Tribunal notes the numerous papers, articles, reports, reviews, and projects that directly or indirectly touch on the question of assistance, support, and reform relevant to economic development through native title. **Attachment 1** lists the title, a brief summary, and electronic link to a sample of these documents. The Tribunal also acknowledges the expertise and continuing research work of organisations such as AIATSIS in this field.

7. In terms of the role and functions of the Tribunal and the regulatory or legislative aspects of native title which might support the economic aspirations of traditional owners, the following views can be expressed. Some of these views and comments are also discussed in response to the terms of reference at Part 4 below.

Legislative

8. As mentioned, the *Native Title Legislation Amendment Bill 2019* was introduced in the House of Representatives on 21 February 2019. The public Consultation Paper which accompanied the Exposure draft of the Bill described a measure designed to provide RNTBCs and common law native title holders with additional avenues of assistance from the Tribunal.

9. Specifically, the proposal (Schedule 7) was described in the Consultation Paper as follows:

> This measure would confer on the National Native Title Tribunal (NNTT) a new function to allow it to provide assistance to registered native title bodies corporate (RNTBC's) and common law holders to promote agreement about native tile and the operation of the Native Title Act. Both RNTBCs and common law holders would be able to approach the NNTT for this assistance. The function is drafted broadly to provide flexibility in how it is used, but is intended to cover the NNTT providing assistance to RNTBCs/common law holders to:
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> - Establish governance processes that are consistent with the Native Title Act and PBC Regulations, eg agreed processes that are consistent with traditional decision making
> - Support resolution of disputes between common law holders and RNTBCs, which may include mediation, and
> - Facilitate collaboration and resolve disputes between RNTBCs.

10. The Tribunal in its comments on the Exposure Draft submitted 12 December 2018 at paragraph 35 said:

> The Tribunal generally supports the proposed amendments in this schedule. We have previously commented on the role which the Tribunal could play in post determination dispute management.

11. Opportunities for economic benefit for traditional owners (direct income, employment and training, joint ventures, contractor work etc.) can arise from the negotiation of resources and infrastructure proposals on native title land. The Tribunal notes s60AB of the Act, which allows a RNTBC to charge a fee for costs it incurs in negotiating a 'right to negotiate' (RTN) agreement or an ILUA. These types of negotiations are initiated by someone other than the RNTBC and are an imposition on a RNTBCs time and resources. This provision does not impose an obligation to pay. A refusal to contribute to a RNTBCs costs of negotiating an RTN agreement of itself is unlikely to lead to a determination that the proponent did not negotiate in good faith (if good faith negotiations were challenged in arbitration). In circumstances where a proponent declines to provide assistance, the RNTBC must fund any legal, financial, and commercial advice itself in order to be able to adequately participate in negotiations. If the RNTBC is impecunious and cannot otherwise source advice they will be at a disadvantage in negotiations and may miss opportunities that might otherwise contribute to their community and to the region. Consideration could be given to ways in which funding for RNTBCs in such negotiations might be secured to avoid the disadvantage described.

Operating environment

12. In the evidence before the committee there was some discussion about the need for a better understanding of the native title environment, particularly by those external parties who wish to do business or engage with traditional owners. This included a need to appreciate the amount of voluntary work undertaken by claim groups, PBCs and RNTBCs to respond to and engage with State and local government, developers, miners and explorers, and various other project proponents. An issue compounding the challenges for bodies such as RNTBCs which was also discussed at the public hearing was the emergence of disputes, such as internal boundary disputes, which were sometimes overlooked or set aside prior to determination. This is discussed further at [65] to [77] below.

13. In response to 'Terms of Reference 2' (paragraphs [54] to [60]) below, the Tribunal describes and provides examples of its educative and assistance functions. Steps to achieve a better understanding across the system involve information and training to bodies and organisations such as State and local government, the resources sector (exploration, small and large mining), the pastoral, agricultural and fishing sector, and, the development sector (perhaps through industry bodies).

Question 2.

Have the needs of Prescribed Bodies Corporates and other native title organisations changed as the number of successful native title claims has increased? If yes, how?

14. In a literal sense the answer (in relation to RNTBCs) is probably 'no'. The core responsibilities of each RNTBC are the same. However, the needs of the body established to hold the native title will be affected by a range of other considerations. Those considerations are unique and may be found in the RNTBCs business plan (should one exist, based on the interests and objectives of the membership) – and in the interest and level of demand that external parties have in the use and access of the native title land.

15. At a regional level however the answer might be different. In Northern Australia there are 141 RNTBCs in relation to 298 determinations of native title. Of the 141 RNTBCs, 71 are in Queensland, 30 in the Northern Territory, and 40 in Western Australia. The numbers will increase as outstanding claims are resolved. In evidence before the Committee on 15 February 2019, Dr Strelein said that: 'native title is not just a property right; it's also a system of property and system of self-government'. If that description is accepted then the structure to support the holder of the native title, the RNTBC, needs to reflect that responsibility. The increasing density of RNTBCs presents challenges and also opportunities.

16. As the Committee was informed at the public hearing a large percentage of RNTBCs have no staff and no income. However, some RNTBCs are the beneficiary of 'royalties' and other income, the holder of land in a range of land titles (arising from claim settlement), and, possibly some operating business ventures (pastoral holdings, ranger programs, tourism ventures etc.).

17. Regardless of its size, a RNTBC is a corporation and the Directors have a fiduciary duty to its membership. The decision making structures of a RNTBC are seemingly more complex than other corporations. A RNTBC may be either a trustee or agent RNTBC[1]. The RNTBC will have Directors. The Directors are not necessarily appointed based on their business expertise and experience. Appointment based on family representation and seniority in the community is often a key criteria. While the Directors have some scope to make decisions, often that scope is limited to see matters through to 'agreement-in-principle' only. Ultimate decision making needs to occur following a consultation and consent process at a community meeting.

[1] An agent may only act within the limit of instructions, a trustee must simply act in the interests of the beneficiaries – although that authority does not extend to decisions which require the consent of the common law native title holders.

18. Unlike mainstream corporations it is likely that a greater range of decision would need to be confirmed by the broader membership of common law native title holders at a community meeting. The cost and logistical arrangements for community meetings can be significant. Costs ideally should be proportionate to benefit (however that might be measured). For decisions concerning lower value proposals (possibly despite high community benefit) the cost may present a barrier. For external parties this can affect the timeliness of decisions and certainty around outcomes.

Question 3.

What role does the Tribunal have in conducting dispute resolution? What challenges are there in providing mediation services?

19. The functions of the Tribunal are described below at Part 2 paragraphs [33] to [37] below. In relation to mediation and dispute resolution the Tribunal can provide:

- Mediation assistance to parties negotiating s31 'right to negotiate' agreements
- Conduct party conferences to help resolve any matter relevant to an inquiry (s150).
- Assist parties on request in negotiating ILUAs (s24BF and s24CF).
- Assist a representative body in performing its dispute resolution functions (s203BK).

20. In conducting mediation and dispute resolution, the Tribunal uses its President, Members, Registrar, and accredited staff members who individually and collectively have significant experience and expertise in native title and cultural heritage law and policy, project management, history and anthropology. These officers also call on the resources of the Tribunal, such as geospatial services, to sometimes create products and portals to assist in dispute resolution. The Tribunal considers its mediation and dispute resolution services to be effective.

21. As discussed above the *Native Title Legislation Amendment Bill 2019* if enacted would confer on the Tribunal a new function to allow it to provide assistance to registered native title bodies corporate (RNTBC's) and common law holders to promote agreement about native title and the operation of the Act. Both RNTBCs and common law holders would be able to approach the Tribunal for this assistance. The function is intended to cover the Tribunal providing assistance to RNTBCs/common law holders to:

- Establish governance processes that are consistent with the Native Title Act and PBC Regulations, for example, agreed processes that are consistent with traditional decision making
- Support resolution of disputes between common law holders and RNTBCs, which may include mediation, and
- Facilitate collaboration and resolve disputes between RNTBCs.

22. In terms of challenges in providing mediation services, clearly remoteness can present difficulties. Often in mediation (particularly resources matters) the legal representatives represent the respective parties in their absence and much of that form of mediation occurs by telephone. While that form of mediation can be constructive in resolving blockages to agreement, ideally face to face engagement and the participation of the stakeholder/s stand a better chance of success. Often availability and cost are cited as a hindrance to face to face meetings.

23. Access to relevant information can be a challenge for the Tribunal as mediator. It is not uncommon in mediation that the proponent and the native title party will not make available to the mediator copies of the very clauses which are in dispute, that is, the commercial terms, despite the statutory confidentiality provided for in s31(4) of the Act.

24. A further challenge in providing mediation services is access to culturally qualified and culturally appropriate mediators. The Tribunal is exploring ways in which this might be better incorporated into its mediation and dispute resolution practice. A co-mediation model is being considered, that is, a model using a Tribunal member or accredited mediator together with a co-mediator selected from a specialist panel. The panel would be established based on eligibility criteria relevant to achieving this objective.

Question 4.

<u>What challenges do Traditional Owners commonly face when engaging in Indigenous Land Use Agreements and other land related agreements?</u>

25. The statutory basis for the Tribunal's assistance and mediation functions are discussed below at [36]-[37]. The engagement of a native title party in mining and exploration proposals on native title land often arises only after the relevant government party notifies of its intention to grant a tenement. Upon being notified the native title party needs to obtain information regarding the proposed grant including: its location; the potential impact of the proposal (in terms of community and social activities, the use and enjoyment of their native title, and cultural heritage); the options it has depending upon the content of the notice; and, the course of action it intends to take. Early engagement (including pre-notification) and ready access to information and advice would streamline this process.

26. Circumstances that might affect the ability of the native title party to engage effectively include the fact that native title party members and/or RNTBC Directors are not always co-located or easily contactable due to remoteness, quality of services (telecommunication availability and coverage), and, other commitments (noting that the role of Director is usually voluntary).

27. Once engaged in negotiation, the effectiveness of the native title party's participation will be often determined by the quality of their representation, the capacity and cohesion of the native title party to provide instructions, and the interests of the parties in wishing to reach agreement.

28. In Part 4 of this Submission in response to 'Terms of Reference 4' the Tribunal discusses the perception that RNTBC disputes are increasing interrupting the ability of RNTBCs to function, particularly with regard to making native title decisions. Again the Tribunal directs the Committee to paragraphs [65] to [77] below.

Question 5.

29. In the transcript of the public hearing at page 14:

> **Senator Dodson:** In attachment 1, could you explain to me the note on remote Indigenous communities situation on crown reserves, crown leases. There's no reference to native title determinations. The only other option is freehold. Can you explain the relationship between the native title, the freehold and the crown tenure – unalienated crown land.

30. At the public hearing it was clarified that reference was being made to the attachment to Map 5 (referred to in Part 3 below), the map of the Indigenous Estate as at 31 December 2018. The relevant note reads:

> Remote indigenous communities are situated on Crown reserves, Crown leases (including pastoral leases), unallocated Crown Land and freehold. Communities are often located on a varied combination of these tenure types.

31. Tribunal searches indicate that there are 27 land parcels within the Northern Australia portion of Western Australia which have been subject to a determination that native title does not exist. These 27 parcels cover approximately 5597.6 square kilometers being 0.75% of the total area of the Indigenous Estate in Northern Australia. All 27 parcels are vested under the *Aboriginal Affairs Planning Authority Act 1972 (WA)*. **Attachment 2** is a table of the 27 parcels identifying the relevant vesting and purpose.

32. Apart from these land parcels, the remainder of the area described as the Indigenous Estate in Map 5 in Western Australia comprises determined native title land, both exclusive and non-exclusive. Exclusive native title land is shaded dark grey. Non-exclusive native title land is shaded light grey.

Part 2

Overview of the role and functions of the National Native Title Tribunal

33. The Tribunal is an independent agency established by the Act. The Tribunal comprises the President and Members, who are appointed by the Governor General under the Act to make decisions, conduct inquiries, reviews and mediations, and assist various parties with native title applications, and Indigenous land use agreements (ILUAs).

34. The President is responsible for managing the administrative affairs of the Tribunal, save for the matters identified in s128(2).

35. Together, the statutory office-holders of the Tribunal, (the President, Members and the Registrar), each have separate and specific functions and responsibilities to perform under the Act.

36. The functions of the Tribunal are described in s108 of the Act.

- Applications, inquiries and determinations
  - Part 3 - Applications – to accept, or not: native title determination applications; expedited procedure objection applications; future act determination applications; and, objection against registration of ILUA applications inquiries and determinations.
  - Division 5 - Inquiries and determinations – to conduct special inquiries; native title application inquiries; and, to make determinations in 'right to negotiate' inquiries.

- Mediation for Federal Court proceedings
  - The Federal Court may refer the whole or part of a proceeding under s86B for mediation by the Tribunal.
  - The Federal Court may refer for review by the Tribunal the issue of whether a native title claim group who is a party in a proceeding holds native title rights and interests as defined.

- Reconsideration of claims
  - If the Registrar does not accept a claim for registration the applicant may apply to the Tribunal to reconsider the claim.

- Assistance and mediation generally
  - Mediation assistance to parties negotiating s31 'right to negotiate' agreements.
  - Conducting party conferences to help resolve any matter relevant to an inquiry (s150).
  - Assist parties on request in negotiating ILUAs (s24BF and s24CF).

- Assist a representative body in performing its dispute resolution functions (s203BK).

- Geospatial assistance including:
  - assistance in the preparation of maps and descriptions.
  - products for mediation purposes, for example maps, 'visualisation' tools, integrated spatial and non-spatial information.
  - overlap and spatial relationship information and advice.
  - compliance advice on maps and descriptions for registration testing and ILUA registration.
  - customised map products.
  - geospatial statistics .
  - spatial searches of the Registers.
  - advice on how to create a map and technical description for submission in a native title application or Indigenous land use agreement.
  - training in spatial concepts, terminology and use of Native TitleVision (NTV) – the Tribunal's online 'visualisation', mapping and query tool.

37. The Registrar has statutory responsibilities including:

- maintaining three Registers: the National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements.
- assessing claimant applications for registration.
- giving notice of native title applications and ILUAs.
- registering ILUAs.
- providing assistance and information.

Part 3

Information and products that may assist the Inquiry

38. The Terms of Reference state that the Joint Standing Committee will inquire and report on the opportunities and challenges associated with land rights, native title and other land-related agreements (together with payments, benefits and access arrangements under these agreements) for the purpose of engaging Traditional Owners in the economic development of Northern Australia.

39. The Tribunal has collated information available from the registers and prepared a series of maps relevant to Northern Australia.

40. Attached please find a series of maps updated to 31 December 2018:

Map 1

Spatial representation of areas of Northern Australia subject to native title determination and claims. The table (inset) describes by area and percentage land and waters determined, claimed, and not subject to claim. Approximately 53.72% of Northern Australia is determined native title land, while 16.24% is currently subject to claim.

Map 2

Spatial representation of registered ILUAs in Northern Australia. The table (inset) describes ILUAs by number, area and percentage of Northern Australia by jurisdiction.

Map 3

Spatial representation of determinations in Northern Australia broken down as exclusive; non-exclusive; native title does not exist; or, native title extinguished.

Map 4

Spatial representation of registered ILUAs in Northern Australia identified as Body Corporate ILUAs or area ILUAs.

41. Initially created at the request of the Department of Prime Minister and Cabinet and arising from the Indigenous Property Rights Project[2] is a product developed by the Tribunal which is an aggregate national view of areas determined, areas transferred or granted under specific Acts, and areas held by Aboriginal and Torres Strait Islander entity trustees, which together comprise the Indigenous Estate. Significantly, the Indigenous Estate constitutes 63.6% of Northern Australia.

[2] In the Indigenous Property Rights Project – Garma Discussion Paper (29 July – 1 August 2016) p6:
'Aboriginal and Torres Strait Islander peoples need a clear picture of their rights and interests in land and waters in order to facilitate effective planning and decision making. The rights and interests recognised by Australian law arise over 18 different Commonwealth, state and territory statutes as well as case law.' This project is also discussed in the Social Justice and Native Title Report 2016 at Chapter 3.7 (p123).

Map 5 and attachment

Indigenous Estate (Northern Australia). The table indicates that 63.6% of Northern Australia is part of the Indigenous Estate. The attachment is the schedule of legislation comprising the Indigenous Estate by jurisdiction.

42. The Indigenous Property Rights Project (reform priorities) is discussed in the Social Justice and Native Title Report 2016 at Chapter 3.7. At p124 reference is made to the benefit to all proponents of development of the Indigenous Estate of accurate and accessible information concerning existing interests in land.

Part 4

Submissions relevant to the Terms of Reference

The Tribunal offers the following submissions in relation to the matters identified in the terms of reference:

1. **The current engagement, structure and funding of representative bodies, including land councils and native title bodies such as prescribed bodies corporates.**

43. The Tribunal maintains positive relationships with native title representative bodies in Northern Australia.

44. In northern Queensland (mainland and the Torres Strait), the Northern Territory, and northern Western Australia the Tribunal has received assistance requests from representative bodies and from RNTBCs in a range of circumstances. The Tribunal has worked collaboratively with these bodies and State and Commonwealth agencies to resolve issues which have limited the effectiveness of decision making in native title organisations. The type of assistance has included information sessions and training, mediation services, mapping and geospatial services, and project management and planning.

45. In relation to 'future act' business – such as proposals concerning mineral and petroleum exploration and production and some major projects involving the acquisition of native title land, the Tribunal can be engaged as mediator, case manager, or arbitrator – and sometimes all three.

46. The Tribunal has provided information sessions and training, particularly in relation to the future act provisions of the Act (not only those related primarily to resource extraction) to several of the Northern Australia representative bodies, and also on request to other traditional owner bodies, local government, government agencies and corporations, and service providers operating in Northern Australia.

47. The Tribunal is not in a position to offer any comment on the structure and funding of such bodies, except to say that the obligations and responsibilities of a prescribed body corporate once a determination of native title is made are significant and immediate.

48. In October 2018 the Commonwealth government released the Public Consultation Paper and Exposure Draft of the *Native Title Legislation Amendment Bill 2018*. Relevant to this Inquiry and this submission are the proposals contained in Schedule 7.

49. The proposal (Schedule 7) was described in the Consultation Paper as follows:

> This measure would confer on the National Native Title Tribunal (NNTT) a new function to allow it to provide assistance to registered native title bodies corporate (RNTBC's) and common law holders to promote agreement about native tile and the operation of the Native Title Act. Both RNTBCs and common law holders would be able to approach the NNTT for this assistance. The function is drafted broadly to provide flexibility in how it is used, but is intended to cover the NNTT providing assistance to RNTBCs/common law holders to:
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> - Support resolution of disputes between common law holders and RNTBCs, which may include mediation, and
> - Facilitate collaboration and resolve disputes between RNTBCs.

50. The Tribunal, in its comments on the Exposure Draft submitted 12 December 2018 at paragraph 35 said:

> The Tribunal generally supports the proposed amendments in this schedule. We have previously commented on the role which the Tribunal could play in post determination dispute management.

51. With already 298[3] determined native title claims (representing 53.72% of Northern Australia) and 141[4] established prescribed bodies corporate in Northern Australia the Tribunal is of the view that improved and additional dispute resolution pathways in the 'post determination' environment will assist with decision making relevant to the performance of their functions, including economic development.

52. The resolution of native title claims leading to 298 determinations, the registration of 881[5] ILUAs (over approximately 31.54% of Northern Australia), and the execution and lodgement of over 1400 s31 agreements in Northern Australia, is evidence of capability of Aboriginal and Torres Strait Islanders to engage and agree. Many of these outcomes were achieved in the course of determining a native title claim – and with the support of the relevant representative body or with the assistance of funded legal support. Following native title recognition, when the RNTBC might be investigating economic development opportunities, support and expertise is generally also required.

[3] There have been 450 determinations nationwide
[4] NT 30, Qld 71, WA 40.
[5] There are 1300 registered ILUAs nationwide

53. The nature of the agreements (form and content), the competing interests (commercial, government, environmental), the complex legislative frameworks, historical land uses and events, and the patchwork tenure (historic and current), make this an extremely challenging operating environment.

2. The role, structure, performance and resourcing of Government entities (such as Supply Nation and IBA)

54. The Committee's attention is drawn to the 2017-18 Federal Court Annual Report Part 5. The annual report includes information regarding the Tribunal's role and function, establishment, work in the relevant period, financial statements, and workload statistics. The Tribunal's key role and functions is also described in Part 2 of this submission.

55. The Tribunal makes no submission in relation to the role, structure, performance and resourcing of other government entities.

56. The Tribunal considers its educative and assistance functions are important to the effective functioning of the native title system. For example:

- In 2017 and 2018 the Tribunal engaged with all 537 local governments across Australia in a survey to assess their knowledge and experience dealing with native title.
- The survey was followed up with workshops involving 34 councils (including approximately 12 in northern Australia) to provide training and gather information regarding the contemporary experience and the usefulness of available information and products.
- Presentations regarding the findings of the survey and workshop were delivered to the Australian Local Government Association and at the Local Government Property Planners Conference in 2018.
- Engagement with ALGA and State local government associations concerning new initiatives and products is continuing.
- At the request of a number of Commonwealth agencies, including the Department of Environment and the Clean Energy Regulator, native title workshops were conducted.
- 'Speaker series' presentations were provided to State departments – 3 in northern Australia.
- Workshops were conducted with representatives and entities in Broome, Darwin and Katherine. These information sessions and workshops covered a range of native title related subject matter – in particular related to doing business on Indigenous land and with traditional owners.

57. A significant, but not surprising finding from the various workshops conducted is that native title is complex and expertise is transient. That is, because native title has not generally become a routine aspect of 'dealings' undertaken or approved by government agencies, it is not always managed effectively nor efficiently. This is despite a general sense (from government entities) that relationships between government entities and traditional owners were positive.

58. The Tribunal draws the committee's attention to s24BF and s24CF – assistance to parties in negotiating ILUAs. The Tribunal has received requests from RNTBCs and from project proponents to assist in the ILUA negotiation process. Examples include projects in the Torres Strait involving infrastructure programs where the assistance involved the mapping of traditional boundaries and the mediation of disputes which better placed the RNTBC in a position to satisfy its consultation obligations. Resolving boundary disputes enabled numerous agreements to be executed and infrastructure delivered.

59. Historically the Tribunal facilitated significant government, industry and traditional owner representative forums directed at developing (and which did develop) acceptable forms of agreement such as template pastoral ILUAs, local government ILUAs, small mining regional ILUAs, standard conditions for the grant of mineral exploration permits and licences etc.

60. As mentioned the *Native Title Legislation Amendment Bill 2018*, if enacted, would create new pathways to address native title related disputes arising after a native title determination. The proposal is to extend access to dispute resolution assistance from the Tribunal to registered native title bodies corporate and common law holders (not just ILUA related disputes). The Tribunal believes it has the resources and skills to effectively provide this assistance should the Bill be enacted.

3. Legislative, administrative and funding constraints, and capacity for improving economic development engagement

61. The Tribunal repeats its response to Committee Question 1 in paragraphs [6] to [13] above.

62. The Committee's attention is again drawn to the *Native Title Legislation Amendment Bill 2018*.

63. The objective of the Bill is to deliver improvements to native title claims resolution, agreement-making and dispute resolution processes prescribed by the Act and other legislation – in particular, to give greater flexibility to native title claimants in designing their internal processes including the ability to impose conditions on the applicant's authority; the ability to allow for majority decisions; the requirement for internal dispute resolution processes with non-member common law holders; and, new pathways to address native title related disputes.

64. As stated earlier the proposal described in Schedule 7 of the Consultation Paper would confer on the Tribunal a new function to allow it to provide assistance to registered native title bodies corporate (RNTBC's) and common law holders to promote agreement about native title and the operation of the Native Title Act. Both RNTBCs and common law holders would be able to approach the Tribunal for this assistance. The function is drafted broadly to provide flexibility in how it is used, but is intended to cover the Tribunal providing assistance to RNTBCs/common law holders to:

- Establish governance processes that are consistent with the Native Title Act and PBC Regulations, eg agreed processes that are consistent with traditional decision making
- Support resolution of disputes between common law holders and RNTBCs, which may include mediation, and
- Facilitate collaboration and resolve disputes between RNTBCs.

4. Strategies for enhancement of economic development opportunities and capacity building for Traditional Owners of land and sea owner entities.

65. There is a perception that RNTBC disputes are increasingly interrupting the ability of PBCs to function - particularly with regard to making native title decisions. The Tribunal recently conducted research on this subject informed by a literature review and a series of meetings with stakeholders.

66. It was generally agreed that there was a need for better dispute resolution processes and an objective third party acting as an honest broker to manage and resolve disputes that occur within RNTBCs was universally recognised by stakeholders[6]. A number of organisations have suggested a hierarchy of interventions (internal processes, elders, NTRB, mediation, the Tribunal, ORIC etc.) designed to enhance the chances of resolution.

67. The research suggests that a reason disputes emerge is often because in advancing a claim to determination some internal boundary disputes are overlooked or purposely set aside until after the determination is handed down. These disputes become deleterious to RNTBC administration in the post-determination environment, particularly where they involve the distribution of compensation or monies stemming from future acts or ILUAs.

68. Related to this is the gulf that can open between the traditional lines of authority within each claim group (and within estate groups and families therein) and the lines of corporate authority in contemporary RNTBC administration[7].

[6] A (current) lack of formal process at the RNTBC level for dispute resolution was seen as a serious and immediate problem.

[7] The internal inconsistency between the requirements of a modern corporation and the structure of pre-colonial kinship systems is a constant factor in dispute management and resolution throughout the RNTBC sector. In an Aboriginal corporation members are much more likely to personally bear the consequences of a bad decision or an unsuccessful agreement.

69. The research suggests that native title disputes can become arenas where pre-existing disputes are played out[8]; fragmentation of knowledge[9] can result in divergent understanding of group membership, country boundaries and familial association to localities and sites; and generational differences concerning the conceptualisation of the relationship of traditional owners with country, are all possibly factors at play.

70. Importantly disputation often arises within a RNTBC where a portion of a determination area is considered by more than one family as 'their' country[10]. In many of these instances the families involved employ the same cultural authoritative logic to make their claims[11] and for that reason these disputes tend to be resistant to resolution or mediation. The research data suggests that management, rather than resolution, might be a more realistic goal. That is, they may be able to be managed through a process which creates a forum within which such disputes may be allowed to unfold without impacting the decision making process of the RNTBC.

71. In order for RNTBC decision making to be viable, and if certainty is necessary to viability, there needs to be a sound decision making process as well as legal avenues for resolving disputes.

72. The Tribunal has provided assistance to a number of native title organisations directed at improved decision making. Key drivers included for example a backlog of infrastructure and social housing projects caused by unresolved traditional boundaries, preventing proper and necessary RNTBC consultation.

73. These projects succeeded due to the alignment of objective and interest of the parties; true drivers; defined project outcomes and benefits; collaborative planning; strong community leadership; identification, availability, and participation of all necessary decision makers; a willingness to act cooperatively; funding availability; advance work (preparing participants, managing expectations); the resolution of some issues in advance through mediation; allowing sufficient time; and consistent and regular messaging. Importantly, the availability of historic tenure and land use information; the use of mapping tools; and the creative deployment of geospatial expertise delivered outcomes (product) of benefit to all parties beyond the immediate need.

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[8] In that situation it is not possible for mediation to be effective as the disputes lie beyond the purview of native title and beyond the scope of the mediation.

[9] ... and different interpretations of cultural tradition

[10] As noted by Sutton, rights and interests to and on country are not held equally by all traditional owners.

[11] That is, they are descended from the same apical ancestor with a historical association with that portion; they are custodians of knowledge specifically about the secret/sacred aspects of hat portion; or they are part of a broader kinship group who hold either or both of these associations.

74. A number of Indigenous groups have requested the Tribunal to map their areas in order to allow members to make properly informed decisions about their land, including decisions about economic development. A successful example of this is the Quandamooka Mapping Guide, developed as a joint effort between the Tribunal and Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC). The Mapping Guide provides a visual representation of land, sea and waters subject to rights and interests under a variety of land tenures and regulations, including native title land, freehold land, pastoral leases and local government zonings.

75. The Mapping Guide is an example of how geospatial mapping technology can be used by Indigenous peoples with interests across many types of tenure. It shows the benefits of mapping specific areas (retaining the ability to exclude sensitive information) as a starting point for discussions about the development opportunities in an area.

76. There are opportunities in Northern Australia which traditional owners have spoken about which are yet to be significantly advanced, for example, aspirations concerning the ownership and management of the Torres Strait fishery.

77. The Tribunal has been privy to information and evidence in performing its arbitral function concerning 'community and social' activities on native title land including successful tourism ventures, ranger programs, and traditional burning practices.

5. <u>The principle of free, prior, and informed consent.</u>

78. Decision making in native title should be based on as much information as possible being available to all parties early in the process.

79. The Tribunal notes that the importance of the principles of free, prior and informed consent has been highlighted in the Social Justice and Native Title Report over many years[12], including the most recent Report in 2016 .

80. Relevant to this inquiry the Tribunal notes the discussion at Chapter 3.6 of the 2016 Report which says that the Indigenous Property Rights Project aims to:

- understand the opportunities and challenges for economic development on the Indigenous Estate, building on the work of other Indigenous property rights related processes.
- facilitate dialogue that considers development of legislative and policy reform affecting the Indigenous Estate, led by Aboriginal and Torres Strait Islander peoples.

[12] In the 2015 Report, former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda emphasised the importance of consultation and free, prior and informed consent. Commissioner Gooda stated that:

> meaningful engagement with Aboriginal and Torres Strait Islander peoples is not just a step in the policy implementation process but an opportunity for our people to participate in decisions that will impact on our communities.

- facilitate engagement between Aboriginal and Torres Strait Islander peoples, government, industry and other stakeholders that recognise development on Indigenous land and waters will only be successful and sustainable where Aboriginal and Torres Strait Islander peoples are provided with the opportunity to:
    - be partners in development
    - give their free, prior and informed consent, and
    - benefit economically and socially from the development.

81. At Chapter 3.7 regarding the mapping of the Indigenous Estate (discussed above) it says:

> One of the first issues raised by Indigenous members of the Network[13] was the need to understand the extent and nature of the Indigenous Estate in order to exercise free, prior and informed consent in relation to external development proposals, and to generate economic opportunities.

82. In terms of Land Use Planning reform it was noted at p127 of the 2016 Report:

> An issue that was raised in the COAG Investigation Report[14] is that some Indigenous land is vulnerable to being designated as having heritage or environmental value without the free, prior and informed consent of the relevant Indigenous peoples, creating a significant barrier to using the land for economic purposes.

83. This led to Recommendation 17:

> The Australian Government support the review of state and territory land use planning regimes in consultation with Indigenous organisations to ensure the Traditional Owners of the Indigenous Estate can exercise the right to free, prior and informed consent regarding land use planning decisions.

84. The Native Title Act was seen as a compromise whereby the indigenous people made significant concessions in terms of their substantive rights in return for procedural rights such as: the statutory procedures for extinguishment of native title; simplified mechanisms for proving native title; and the Right to Negotiate process. Procedural rights do not include all rights. For example, where State legislation requires that the consent of a freehold owner be sought, this is not a procedural right but a substantive right.

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[13] Indigenous Strategy Group and Indigenous Property Rights Network

[14] In late 2015 the *Investigation into Indigenous Land Administration and Use* report (COAG Investigation Report) authored by the Senior Officers Working Group was handed to COAG. The report contained a series of recommendations from the Senior Officers Working Group, some of which were endorsed by the Expert Indigenous Working Group. The Expert Indigenous Working Group also provided commentary and its own recommendations.

6. Opportunities that are being accessed and that can be derived from Native Title and statutory titles such as the ALR (NT) Act 1976.

85. As mentioned above, the Tribunal has been privy to information and evidence in performing its arbitral function concerning 'community and social' activities on native title land including successful tourism ventures, ranger programs, and traditional burning practices. The operation and extent and success of ranger programs in Northern Australia, and the benefits derived, are mentioned often in matters before the Tribunal.

86. The Tribunal is also aware of State programs such as the Cape York Peninsula Tenure Resolution Program which is described on the Queensland government website as changing the tenure of identified properties to Aboriginal freehold land, allowing Traditional Owners to return to live on country and pursue employment and business opportunities in land management, grazing, and mining.

National Native Title Tribunal
1 March 2019

Attachment 1

Economic Development and Native Title

1. **Promoting Economic and Social Development through Native Title – August 2004**

This paper published by the Australian Institute of Aboriginal and Torres Strait Islander Studies considers how native title might assist traditional owners to realise their economic and social development goals.

2. **Native title, economic development and the environment – 2009**

This article published in the Australian Law Reform Commission Reform Journal discusses reform of native title to enable Indigenous people to take advantage of environmental land management opportunities as a source of economic development.

3. **Commercial Exploitation of Native Title Rights - A Possible Tool in the Quest for Substantive Equality for Indigenous Australians? - 2011**

This article published by in the Adelaide Law Review considered the scope for commercial exploitation of native title rights by Traditional Owners to address economic and social disadvantage. For a discussion on reforms to native title to expand the scope for commercial exploitation see pages 257-261.

4. **Review of the Indigenous Land Corporation and Indigenous Business Australia – February 2014**

This report published by the Department of Prime Minister and Cabinet was a review of Indigenous Business Australia and the Indigenous Land Corporation, and how they can drive Indigenous economic development. The report identifies specific inhibitors to Indigenous economic development in pages 33-37.

5. **Review of the roles and functions of Native Title Organisations - March 2014**

This report commissioned by the Australian Government and published by Deloitte was a review of the roles and functions of native title organisations. The report discussed the different pathways RNTBC's can take depending on the availability of economic development opportunities at pages 21-22. Funding of RNTBC's is explored in pages 22-25, as well as potential additional sources of RNTBC funding on pages 26-27. A discussion of contestable markets and RNTBC's post-determination is also undertaken on pages 30-36.

6. **Commonwealth Native Title Connection Policy Research Project: final report – July 2014**

This report commissioned by the Commonwealth Attorney-General's Department and published by the Australian Institute of Aboriginal and Torres Strait Islander Studies was the culmination of research focused on the assessment of native title connection in consent determinations. For discussion of Indigenous economic development in the context of native title, see pages 23-24.

7. **Creating Parity – The Forrest Review - August 2014**

This report published by the Department of Prime Minister and Cabinet contains recommendations relating to creating parity between Indigenous and other Australians. For a discussion of parity in the context of land and economic development, see pages 209-221.

8. **Connection to Country: Review of the Native Title Act 1993 (Cth) – June 2015**

This report published by the Australian Law Reform Commission was the first major review of the law governing connection in native title claims since the Native Title Act was introduced. For a discussion of commercial native title rights and reform of the NTA see pages 238-261.

9. **White Paper on Developing Northern Australia – June 2015**

This report published by the Department of Industry, Innovation and Science highlights the opportunity for growth in Northern Australia, focusing on six key pillars. For a discussion of land arrangements and economic opportunity in Northern Australia, see pages 15-18 and 26-39. There is also a discussion on economic opportunity in native title in pages 19-26.

10. **Commercial Native Title rights in 2018: a belated new dawn – February 2019**

This article written by a native title lawyer and published online provides a comprehensive summary of the development of the law relating to commercial native title rights.

Attachment 2

Land Tenure within Indigenous Estate areas where it has been determined that Native Title Does Not Exist (WA)					
Tenure	**LandType3**	**Vesting**	**Purpose**	**Name**	**Tenure Class**
Freehold				58 Hampton Street, Roebourne	Aboriginal Freehold
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	MANAGEMENT ORDER ABORIGINAL LANDS TRUST	USE & BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	VEST ABORIGINAL LANDS TRUST W.P.L.	HEALTH CLINIC AND ASSOCIATED STAFF HOUSING		Reserve/Park
Reserve C	RESVE	VEST: ABORIGINAL LANDS TRUST W P L (ANY TERM) MINISTERS CONSENT REQUIRED	HEALTH CLINIC AND ASSOCIATED STAFF HOUSING		Reserve/Park
Reserve C	RESVE	ABORIGINAL LANDS TRUST W.P.L. ANY TERM, SUBJECT TO CONSENT OF THE MINISTER FOR LANDS	ABORIGINAL MEDICAL SERVICE		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	MANAGEMENT ORDER ABORIGINAL LANDS TRUST	USE & BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST ABORIGINAL LANDS TRUST W.P.L.	USE & BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	VEST ABORIGINAL LANDS TRUST W.P.L.	USE & BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	MANAGEMENT ORDER ABORIGINAL LANDS TRUST	VEHICULAR ACCESS		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	MANAGEMENT ORDER ABORIGINAL LANDS TRUST	USE AND BENEFIT OF ABORIGINAL INHABITANTS (I202248		Reserve/Park
Reserve A	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	ABORIGINAL MISSION STATION FORREST RIVER MISSION		Reserve/Park
Reserve A	RESVE	VEST ABORIGINAL LANDS TRUST W.P.L.	USE & BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	ABORIGINAL LANDS TRUST W.P.L. ANY TERM	USE AND BENEFIT OF ABORIGINAL INHABITANTS		Reserve/Park
Reserve C	RESVE	VEST:ABORIGINAL LANDS TRUST W.P.L. ANY TERM	AERIAL LANDING GROUD		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VESTING THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park
Reserve C	RESVE	VEST: THE ABORIGINAL AFFAIRS PLANNING AUTHORITY	USE & BENEFIT OF ABORIGINES		Reserve/Park

Source: Land tenure data sourced from Landgate, WA (February 2019).

Table 1: Northern Australia	WA		NT		QLD	
	%	Area sqkm	%	Area sqkm	%	Area sqkm
Determined	81.5%	758,388	22.6%	304,457	38.9%	363,595
Subject to claim	12.8%	118,923	7.7%	104,662	31.9%	298,271
Not subject to claim	5.7%	53,430	69.7%	938,672	29.2%	272,467
Total	100.0%	930,741	100.0%	1,347,791	100.0%	935,333

MAP 1

National Native Title Tribunal

Northern and Southern Australia

Native Title Determinations and Claims

As at 31 December 2018

DARWIN
BROOME
CAIRNS
Tropic of Capricorn
BRISBANE
PERTH
SYDNEY
CANBERRA
ADELAIDE
MELBOURNE
HOBART

Determined
Area Subject to
Area Not Subject to

Northern Australia administrative area (Our North, Our Future: White Paper on Developing Northern Australia (Canberra: Australian Government, 2015).

Some or parts of some determinations may not yet be in effect or on the National Native Title Register (NNTR). The court may decide that the determination of native title will take effect conditional upon some future event occurring, for example, the registration of an Indigenous Land Use Agreement or the establishment and registration of a prescribed body corporate (PBC). In these cases the determination, or relevant part, will not be registered on the NNTR until the condition has been met.

Spatial data sourced from and used with permission of: Landgate (WA), Dept of Natural Resources & Mines (Qld), © The State of Queensland, Land & Property Management Authority (NSW), Dept of Lands, Planning & the Environment (NT), Dept for Planning, Transport & Infrastructure (SA), Dept of Environment and Primary Industries (Vic) and Geoscience Australia, Australian Government, © Commonwealth of Australia.

Areas have been calculated using Australian Albers projection (EPSG 3577) in square kilometres. Reference to ACT also include Jervis Bay Territory.

Table 2: Southern Australia	WA		QLD		SA		NSW		VIC		ACT	
	%	Area sqkm	%	Area sqkm	%	Area sqkm	%	Area sqkm	%	Area sqkm	%	Area sqkm
Determined	51.8%	828,804	22.5%	178,410	60.9%	599,677	1.3%	10,119	11.4%	25,925	0.0%	0
Subject to claim	37.8%	603,365	29.2%	232,247	11.2%	110,466	31.3%	250,741	13.1%	29,849	2.8%	67
Not subject to claim	10.4%	166,105	48.3%	383,750	27.9%	274,179	67.4%	540,290	75.5%	171,670	97.2%	2,357
Total	100.0%	1,596,274	100.0%	794,407	100.0%	984,322	100.0%	801,150	100.0%	227,444	100.0%	2,424

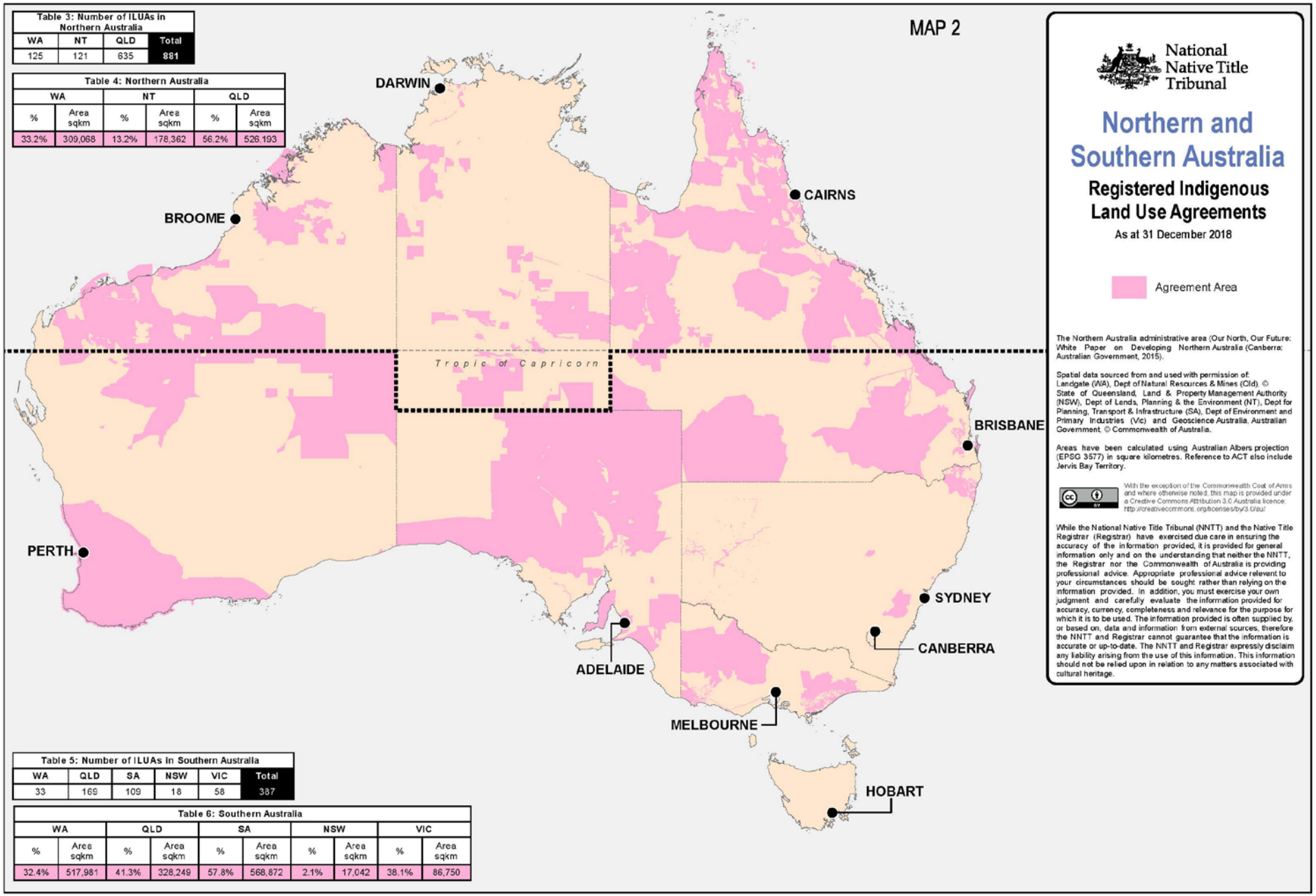


Table 3: Number of ILUAs in Northern Australia

WA	NT	QLD	Total
125	121	635	881

Table 4: Northern Australia

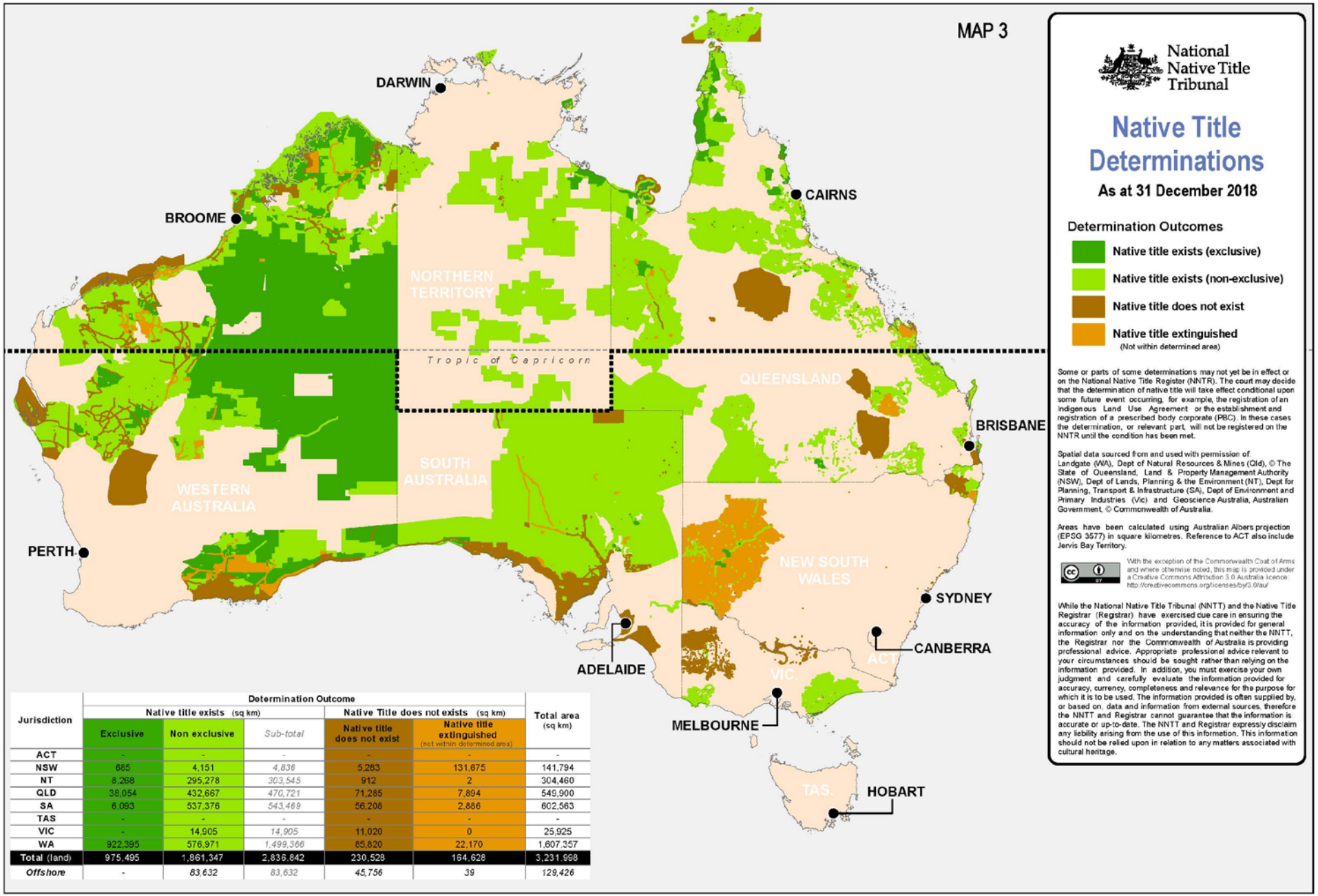
WA		NT		QLD	
%	Area sqkm	%	Area sqkm	%	Area sqkm
33.2%	309,068	13.2%	178,362	56.2%	526,193

Table 5: Number of ILUAs in Southern Australia

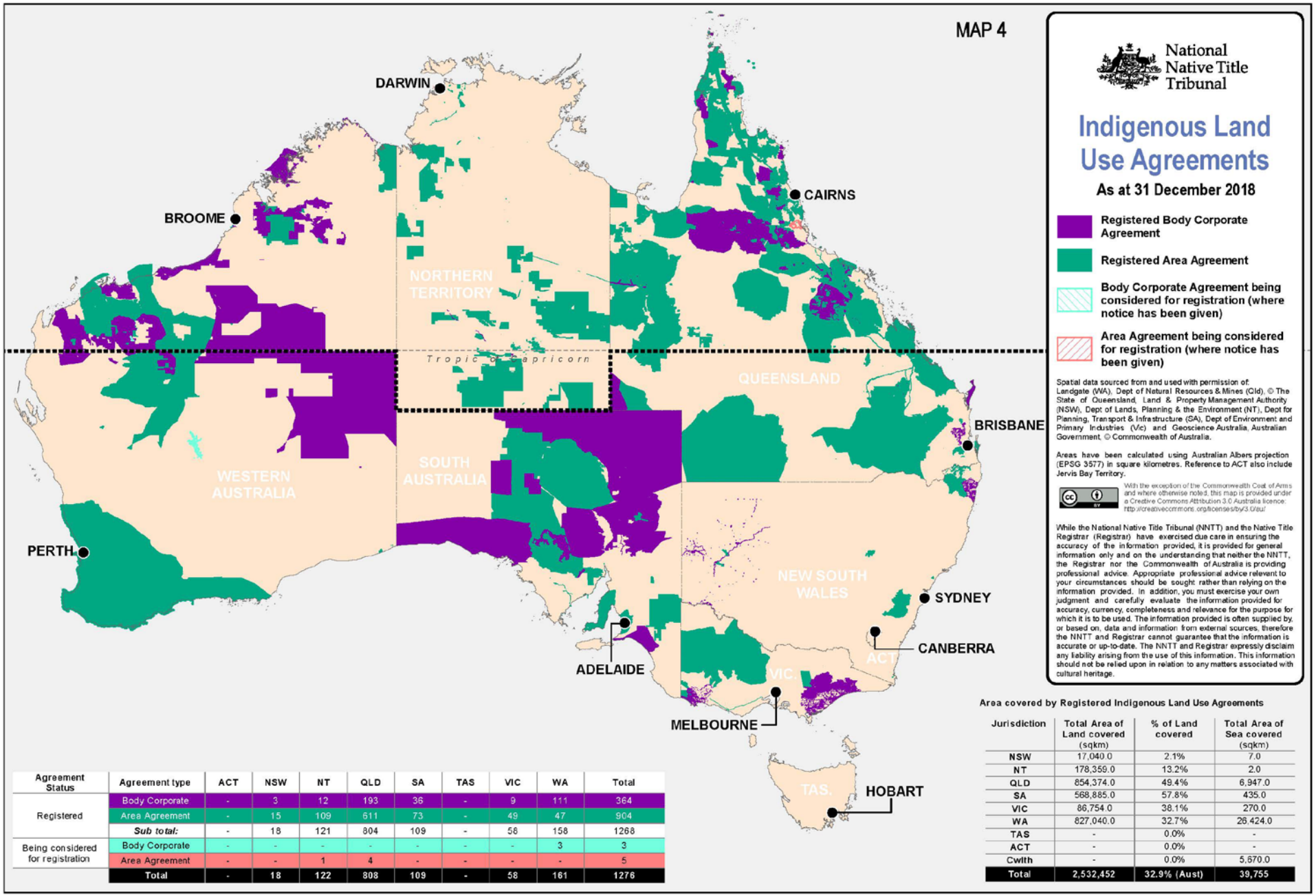
WA	QLD	SA	NSW	VIC	Total
33	169	109	18	58	387

Table 6: Southern Australia

WA		QLD		SA		NSW		VIC	
%	Area sqkm	%	Area sqkm	%	Area sqkm	%	Area sqkm	%	Area sqkm
32.4%	517,981	41.3%	328,249	57.8%	568,872	2.1%	17,042	38.1%	86,750



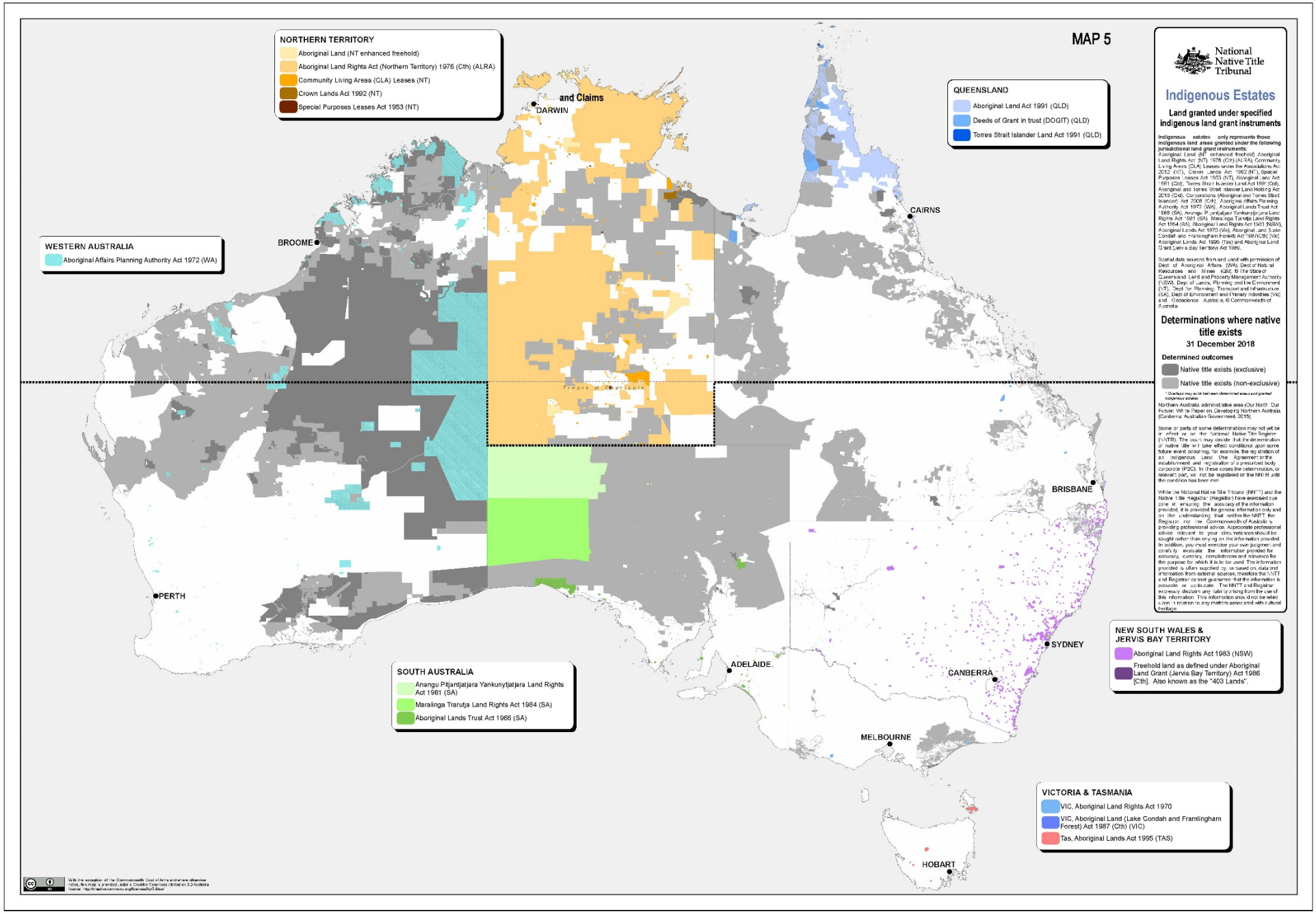
Jurisdiction	Determination Outcome					Total area (sq km)
	Native title exists (sq km)			Native Title does not exists (sq km)		
	Exclusive	Non exclusive	Sub-total	Native title does not exist	Native title extinguished (not within determined area)	
ACT	-	-	-	-	-	-
NSW	685	4,151	4,836	5,283	131,675	141,794
NT	8,268	295,278	303,545	912	2	304,460
QLD	38,054	432,667	470,721	71,285	7,894	549,900
SA	6,093	537,376	543,469	56,208	2,886	602,563
TAS	-	-	-	-	-	-
VIC	-	14,905	14,905	11,020	0	25,925
WA	922,395	576,971	1,499,366	85,820	22,170	1,607,357
Total (land)	975,495	1,861,347	2,836,842	230,528	164,628	3,231,998
Offshore	-	*83,632*	*83,632*	*45,756*	*39*	*129,426*



Agreement Status	Agreement type	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Registered	Body Corporate	-	3	12	193	36	-	9	111	364
	Area Agreement	-	15	109	611	73	-	49	47	904
	Sub total:	-	18	121	804	109	-	58	158	1268
Being considered for registration	Body Corporate	-	-	-	-	-	-	-	3	3
	Area Agreement	-	-	1	4	-	-	-	-	5
	Total	-	18	122	808	109	-	58	161	1276

Area covered by Registered Indigenous Land Use Agreements

Jurisdiction	Total Area of Land covered (sqkm)	% of Land covered	Total Area of Sea covered (sqkm)
NSW	17,040.0	2.1%	7.0
NT	178,359.0	13.2%	2.0
QLD	854,374.0	49.4%	6,947.0
SA	568,885.0	57.8%	435.0
VIC	86,754.0	38.1%	270.0
WA	827,040.0	32.7%	26,424.0
TAS	-	0.0%	-
ACT	-	0.0%	-
Cwlth	-	0.0%	5,670.0
Total	2,532,452	32.9% (Aust)	39,755


MAP 5
National Native Title Tribunal
Indigenous Estates
Land granted under specified Indigenous land grant instruments
Indigenous estates only represents those Indigenous land areas granted under the following jurisdictional land grant instruments:
Aboriginal Land (NT enhanced freehold); Aboriginal Land Rights Act (NT) 1976 (Cth) (ALRA); Community Living Areas (CLA) Leases under the Associations Act 2012 (NT); Crown Lands Act 1992 (NT); Special Purposes Leases Act 1953 (NT); Aboriginal Land Act 1991 (Qld); Torres Strait Islander Land Act 1991 (Qld); Aboriginal and Torres Strait Islander Land Holding Act 2013 (Cth); Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth); Aboriginal Affairs Planning Authority Act 1972 (WA); Aboriginal Lands Trust Act 1966 (SA); Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA); Maralinga Tarutja Land Rights Act 1984 (SA); Aboriginal Land Rights Act 1983 (NSW); Aboriginal Lands Act 1970 (Vic); Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 (Cth) (Vic); Aboriginal Lands Act 1995 (Tas) and Aboriginal Land Grant (Jervis Bay Territory) Act 1986.
Spatial data sourced from and used with permission of Dept of Aboriginal Affairs (WA) Dept of Natural Resources and Mines (Qld), © The State of Queensland Land and Property Management Authority (LPMA), Dept of Lands, Planning and the Environment (NT), Dept for Planning, Transport and Infrastructure (SA), Dept of Environment and Primary Industries (Vic) and Geoscience Australia © Commonwealth of Australia.
Determinations where native title exists
31 December 2018
Determined outcomes
Native title exists (exclusive)
Native title exists (non-exclusive)
* Overlays may exist between determined areas and granted Indigenous estates
Northern Australia administrative area (Our North, Our Future: White Paper on Developing Northern Australia, Canberra, Australian Government, 2015).
Some or parts of some determinations may not yet be in effect or on the National Native Title Register (NNTR). The court may decide that the determination of native title will take effect conditional upon some future event occurring, for example the registration of an Indigenous Land Use Agreement or the establishment and registration of a prescribed body corporate (PBC). In these cases the determination, or relevant part, will not be registered on the NNTR until the condition has been met.
While the National Native Title Tribunal (NNTT) and the Native Title Registrar (Registrar) have exercised due care in ensuring the accuracy of the information provided, it is provided for general information only and on the understanding that neither the NNTT, the Registrar nor the Commonwealth of Australia is providing professional advice. Appropriate professional advice relevant to your circumstances should be sought rather than relying on the information provided. In addition, you must exercise your own judgment and carefully evaluate the information provided for accuracy, currency, completeness and relevance for the purpose for which it is to be used. The information provided is often supplied by, or based on, data and information from external sources, therefore the NNTT and Registrar cannot guarantee that the information is accurate or up-to-date. The NNTT and Registrar expressly disclaim any liability arising from the use of this information. This information should not be relied upon in relation to any matters associated with cultural heritage.
NORTHERN TERRITORY
Aboriginal Land (NT enhanced freehold)
Aboriginal Land Rights Act (Northern Territory) 1976 (Cth) (ALRA)
Community Living Areas (CLA) Leases (NT)
Crown Lands Act 1992 (NT)
Special Purposes Leases Act 1953 (NT)
and Claims
DARWIN
QUEENSLAND
Aboriginal Land Act 1991 (QLD)
Deeds of Grant in trust (DOGIT) (QLD)
Torres Strait Islander Land Act 1991 (QLD)
CAIRNS
WESTERN AUSTRALIA
Aboriginal Affairs Planning Authority Act 1972 (WA)
BROOME
BRISBANE
PERTH
SYDNEY
NEW SOUTH WALES & JERVIS BAY TERRITORY
Aboriginal Land Rights Act 1983 (NSW)
Freehold land as defined under Aboriginal Land Grant (Jervis Bay Territory) Act 1986 [Cth]. Also known as the "403 Lands".
SOUTH AUSTRALIA
Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)
Maralinga Tarutja Land Rights Act 1984 (SA)
Aboriginal Lands Trust Act 1966 (SA)
ADELAIDE
CANBERRA
MELBOURNE
VICTORIA & TASMANIA
VIC, Aboriginal Land Rights Act 1970
VIC, Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 (Cth) (VIC)
Tas, Aboriginal Lands Act 1995 (TAS)
HOBART

Map 5 Attachment

State/territory	Legislation and tenure type
Northern Territory	*Aboriginal Land Rights Act (Northern Territory) 1976 (Cth)* (ALRA) Under the ALRA, approximately half of the NT has now been granted as Aboriginal land under inalienable freehold title
	Community Living Areas (CLA) Leases Generally granted as excisions from Pastoral Leases and governed under the *Associations Act 2012* (NT)
	Town camp leases under the *Crown Lands Act* 1992 (NT)
	Town camp leases under the *Special Purposes Leases Act 1953* (NT)
Queensland	*Aboriginal Land Act 1991* *Torres Strait Islander Land Act 1991* *Aboriginal and Torres Strait Islander Land Holding Act 2013* Deed of Grant in Trust (DOGIT) land is granted 'in fee simple in trust' for the benefit of Indigenous inhabitants or for Indigenous purposes.
Western Australia	There is no state based land rights arrangement that grants land directly to Indigenous people or organisations. The *Aboriginal Affairs Planning Authority Act 1972* established the Aboriginal Lands Trust which manages land for the use and benefit of Aboriginal people. Remote Indigenous communities are situated on Crown reserves, Crown leases (including pastoral leases), unallocated Crown Land and freehold. Communities are often located on a varied combination of these tenure types.
South Australia	*Aboriginal Lands Trust Act 1966* Freehold title vested in a trust bound statutory functions and powers. 64 properties comprising approximately 990,000 hectares of land located across SA.
	Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 Freehold title vested in a trust bound statutory functions and powers. Approximately 103,000sq kms in the North Western corner of SA.

	Maralinga Tjarutja Land Rights Act 1984 Freehold title vested in a trust bound statutory functions and powers. Lands area covers approximately 103,000sq kms in the western region of SA.
New South Wales	*Aboriginal Land Rights Act 1983* Provides for land held as freehold title (Torrens) by various Land Councils
Victoria	*Aboriginal Lands Act 1970* Freehold title provided to the Lake Tyers and Framlingham Aboriginal communities.
	Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987(Cth) Freehold title in land vested in Aboriginal corporations.
Tasmania	*Aboriginal Lands Act 1995*
Jervis Bay Territory	*Aboriginal Land Grant (Jervis Bay Territory) Act 1986*