Land Justice for Indigenous Australians: Dealings in native title lands and statutory Aboriginal land rights regimes in northern Australia and why land tenure reform is critical for the social, economic and cultural reconstruction of Aboriginal people and communities

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**Introduction**

Research on the land tenure aspirations of Aboriginal people in the Kimberley region in WA in 2011 found that Aboriginal people as native title holders are reluctant to surrender their native title rights and interests in exchange for forms of Crown title. Native title determinations in Australia align the incidents of title with attested ‘custom’ such as hunting, fishing and gathering. So far, they have excluded ‘alienability’ as a feature, other than by surrender to the Crown for their permanent extinguishment. While native title rights and interests are considered by the High Court to be a property right, native title holders are unable to use their native title rights and interests to engage in the modern economy in ways that require them to be alienable or as equity to secure finance. Similarly, the statutory Aboriginal land rights regimes that pre-date *Mabo (No. 2)* impose similar restrictions on alienability and use of the land as equity to secure finance.

The Commonwealth believes these arrangements are an obstacle to the expansion of government-backed home ownership programs and private economic development and is actively urging the states to undertake land tenure reforms aimed at individuating land titles and facilitating private home ownership. This land tenure debate centres on the merits of individual ownership versus communal or group ownership in order to generate private home ownership and economic development.

The current land tenure reforms being promoted by the Commonwealth raise several important questions.

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² This presentation is a refined version of a presentation to the CAEPR/CASS Engaging Indigenous Economy Conference ANU Canberra 4 & 5 September 2014.

³ The author acknowledges the diversity of cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples and that throughout this paper, the term ‘Aboriginal people’ recognises that Aboriginal and Torres Strait Islander people have a collective, rather than purely individual dimension to their livelihoods.
Why do the reforms have to involve the abolition or surrender and permanent extinguishment of customary land rights?

Are there different approaches that enable Aboriginal people to engage in the modern economy on their lands on their terms and without having to surrender and extinguish their customary rights and interests?

This presentation is a brief overview of the issues associated with dealings with land subject to native title rights and interests and dealings with land held under the various statutory Aboriginal land rights regimes in Australia that may or may not result in superior outcomes for customary rights holders, and draws some conclusions about where the need for tenure reform should lie.

The current debate about ‘Indigenous land tenure reform’ is skewed toward the neo-liberal view of private home ownership and capital accumulation at the expense of communal forms of tenure where the land value capture can benefit present and future generations and insulate low to middle income households from the vagaries of the housing market, especially in remote communities where no such market exists (if it ever will in its pure form).

I do not support the ‘Indigenous land tenure’ reforms being promoted by the Institute of Public Affairs or the Centre for Independent Studies, for reasons that will become clear in this paper. Indeed, I find the central tenets of the Indigenous land tenure reform arguments advanced by these organisations quite distasteful and very disrespectful of Indigenous views and values. I am not suggesting for one moment that I know and understand Indigenous views and values. Quite the contrary. I am not speaking on their behalf, I have no authority to do so. I am merely reflecting what I am hearing and seeing based on my engagement with Aboriginal and Torres Strait Islander people over the past 20 years or so. What I am saying is that I come at these issues from a very different perspective and from a very different background. Land tenure and land administration have been an integral part of my professional life since the early 1970s.4

In 2011, a study undertaken for the WA Department of Indigenous Affairs (SGS Economics and Planning 20125) on whether the Aboriginal Lands Trust (ALT) estate in WA could be transferred to Aboriginal people within the existing land tenure system found there is:

- a low level of understanding amongst Aboriginal people of what ‘home ownership’ means and the implications of becoming a home owner;
- a high level of misunderstanding amongst Aboriginal people of the Crown’s land tenure system and misapprehension about the need for change; and
- a high level of mistrust amongst Aboriginal people and native title holders because governments are notorious for continually changing their policies and positions.

More significantly, the study also found that native title holders are reluctant to surrender their native title rights and interests in exchange for a form of tenure they have little or no understanding of, and which they regard as being inferior to customary land rights. But none of this is new as Aboriginal people have been voicing these concerns for decades.

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4 The author spent over 25 years defending the Canberra leasehold system. See the papers of Ed Wensing in the Manuscript collection of the National Library of Australia.

5 The author was the lead researcher on this study.
Two important questions arise from this study:

- Why do native title holders have to surrender and agree to the permanent extinguishment of their customary rights and interests in order to participate in the modern economy?
- Why is it not possible for customary rights and interests to be accommodated in conventional land tenure systems in such a way that would enable the customary rights holders to engage in the modern economy on their lands, on their terms and without having to surrender and extinguish their native title rights and interests forever?

These two questions made me think about these matters and they are in fact the focus of my PhD research and this paper provides some insights.

The current basis for admitting Aboriginal land rights into the Anglo-Australian framework of land law and tenure continues the dispossession of colonialism, only this time under the guise of inalienability giving the Crown a monopoly power to extinguish customary land rights and interests. The content of the statutory Aboriginal land rights regimes in Australia with respect to enabling land dealings that may or may not result in superior outcomes for customary rights holders are also outlined, and I postulate that it is time to ‘puncture some legal orthodoxies’ relating to property and land tenure.

A wider context

The issues of land tenure reform however must be viewed in a much wider context, and Jon Altman (2014) has done this by looking at what he calls the Indigenous titling ‘revolution’.

Figure 1 (Included at the end of this paper) shows the extent of dispossession and re-titling of Indigenous interests in land from 1788 to the present. As Altman (2014: 3) notes “In 1788 Indigenous nations possessed the entire continent. Then during a prolonged period of land grab from 1788 to the late 1960s Indigenous peoples were dispossessed. But then, from the late 1960s, there has been an extraordinary period of rapid legal repossession and restitution that is ongoing. This has not occurred as part of some coherent policy framework, but rather as a somewhat ad hoc land titling ‘revolution’ driven intermittently by political, social justice and judicial imperatives.”

The land titling ‘revolution’ includes a range of land rights grants, purchases, native title determinations, areas subject to indigenous land use agreements, areas subject to joint management, Indigenous Protected Areas and a mix of other joint management or conservation arrangements.

Altman has mapped these land titles (Altman and Kerins 2012; Altman 2014) and they total around 2.5 million square kilometres or roughly 33 per cent of terrestrial Australia (Figure 2). This includes:

Figure 2 provides information on land titling under three tenures:

- land claimed or automatically scheduled under land rights law, an estimated 969,000 sq kms;
- 92 determinations of exclusive possession under native title law totalling 752,000 sq kms; and
- 142 determinations of non-exclusive possession under native title law totalling 825,000 sq kms.

The last category often provides a weak form of property right that needs to be shared with other interests, most commonly commercial rangeland pastoralism.
• land held under general land administration legislation that allows governments to create reserves, freehold title or leases for the benefit of Aboriginal or Torres Strait Islander people;
• statutory land rights regimes which generally grants an inalienable freehold title to traditional owners (who are identified in accordance with traditional laws and customs and are communal land holders) and/or Aboriginal or Torres Strait Islander residents of an Aboriginal or Torres Strait Islander community; and
• the Commonwealth Native Title Act 1993 (NTA) which provides for the recognition, as native title, of the communal group or individual rights and interests of native title holders under their traditional laws and customs in relation to their land or waters.

However, the way the native title system is slowly evolving, it is not delivering many results that benefit Aboriginal people (French 2009: 37). According to Bauman (et al 2013: 1), native title claimants ‘face a miasma of complex legal and political issues, competing demands, a lack of resources, and a great deal of uncertainty’ and for native title holders, the ‘recognition of traditional rights in country is often hard won, euphoric and highly symbolic’.

Altman (2014: 7) also highlights the fact that most Indigenous Australians do not live on Indigenous titled land (Figure 3), estimating that less than 100,000 of a total Indigenous population of 660,000 people live on those lands and notes that it is not clear how many of these are traditional owners (as defined in the statutory sense – see Edelman 2009) or how many traditional owners live off their lands. Altman (2014: 7) concludes that what is clear, is that by correlating population with land title and where there is land rights or exclusive possession native title, over eight per cent of the population in these locations is Indigenous compared with a national proportion of just on three per cent. Altman also argues, hypothetically, that if all native title claims were successful, as much as 70% of Australia could be under some form of Indigenous title and as much as 40% of the Indigenous population could be resident on those lands.

Turning to northern Australia, which accounts for 39% of the Australian continental landmass. Research undertaken by Altman and Markham (2014: 5)) shows that lands with confirmed Indigenous interests are spatially concentrated in northern Australia, and accounts for 48 per cent of the 3 million sq kms of Northern Australia.

Table 1 shows the relationship between Indigenous land interests and population. According to the 2011 Census, northern Australia is home to 1,055,000 people (4.7% of Australia’s population), 159,000 (15%) of whom are Indigenous, accounting for 24% of Australia’s total Indigenous population (660,000 people) (Altman and Markham 2014: 5).
Table 1: Indigenous land interests and population

<table>
<thead>
<tr>
<th>Area (km²)</th>
<th>Area (%)</th>
<th>Population</th>
<th>Indigenous population</th>
<th>% population Indigenous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Australia</td>
<td>3,004,451</td>
<td>100.0</td>
<td>1,055,304</td>
<td>158,565</td>
</tr>
<tr>
<td>Land rights &amp; reserves</td>
<td>592,829</td>
<td>19.7</td>
<td>56,031</td>
<td>48,796</td>
</tr>
<tr>
<td>Exclusive possession native title</td>
<td>443,458</td>
<td>14.8</td>
<td>10,969</td>
<td>8,939</td>
</tr>
<tr>
<td>Non-exclusive possession native title</td>
<td>405,213</td>
<td>13.5</td>
<td>7,076</td>
<td>1,788</td>
</tr>
<tr>
<td>Registered claims</td>
<td>831,637</td>
<td>27.7</td>
<td>355,156</td>
<td>38,990</td>
</tr>
<tr>
<td>Non-Indigenous owned or claimed conservation areas</td>
<td>79,935</td>
<td>2.7</td>
<td>5,641</td>
<td>1,084</td>
</tr>
<tr>
<td>Remainder of Northern Australia</td>
<td>651,378</td>
<td>21.7</td>
<td>620,431</td>
<td>58,969</td>
</tr>
</tbody>
</table>

Overlap removed between tenure types to ease interpretation. Population estimates derived from 2011 ABS estimated resident population pro-rated using Mesh Block SA1 census count weights.

Source: Altman and Markham 2014b: 6

Altman and Markham (2014: 6) draw two observations from Table 1. First, that the Indigenous people constitute a far more significant proportion of the non-urban population in northern Australia. Second, the proportion of the population that is Indigenous varies markedly depending on form of tenure. On land held under land rights law and where exclusive possession native title determinations have been made, the Indigenous share of the population is over 80%, and where non-exclusive possession native title determinations have been made, the Indigenous share of the population drops to 25%, and where there are registered native title claims, the proportion drops to 11%. Altman and Markham (2014: 6) conclude therefore that depending on the form of native title determinations, the determinations might influence the proportion of the Indigenous population and that this may have ramifications for the form of development, especially where native title holders have a right to determine access.

‘Dealings’ in native title lands

Land granted or reserved for the benefit of Aboriginal and Torres Strait Islander people under statutory land rights regimes is deemed not to have extinguished native title rights and interests (Pareroutija v Tickner 1993). Therefore, any dealings⁷ in communally owned land or land reserved for the use and benefit of Aboriginal people, must also take into account the native title rights and interests for the dealings to be valid.

Land subject to native title rights and interests is inalienable and under the Native Title Act 1993 (Cth), the native title rights and interests can only be surrendered to the Crown. A native title determination does not give native title holders any power or authority to grant subsidiary interests including leases, and is statutorily protected from debt recovery processes. It is therefore unusable as security against a loan (Wensing and Taylor 2012:22; Wensing 2013).

The extent to which a prescribed body corporate (PBC) or Registered Native Title Body Corporate (RNTBC) is able to assign leases over land still subject to native title rights and interests may also be constrained by s 56(5) of the Native Title Act 1993 (Cth), which states that the native title rights and

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⁷ Dealing is the legal processes through which land is bought and sold or otherwise transferred, also known as conveyancing. This involves the preparation of hard copy documents as evidence of a land transaction between parties.
interests held by a body corporate are not able to be ‘assigned, restrained, garnisheed, seized or sold’ or ‘made subject to any charge or interest...as a result of the incurring, creation or enforcement of any debt or other liability of the body corporate’, including ‘any act done by the body corporate’.

Section 56(5) of the Act is effectively a detailed reflection of what is regarded as the common law position on native title set out in Mabo [No. 2]. It provides that since native title is a form of property that exists subject to the Crown’s radical title and therefore outside the real property system originating from the Crown, it cannot be given by native title holders to anybody but the Crown. If that is the position, at common law a native title cannot subsist with the creation of a freehold title, lease or any sublease exercised pursuant to a lease (by native title holders or otherwise).

While, the argument remains that the Native Title Act 1993 (Cth) alters the common law by enacting the non-extinguishment principle and applying it to specified future acts, the reality is that in striking contrast to other citizens, native title holders cannot enter the market to realise the value of the property rights by leasing, mortgaging or selling them, because the Crown has a monopoly over the acquisition and extinguishment of those rights (Gover, 2012). Nevertheless, Gover (2012) asserts that governments have a moral obligation, if not a fiduciary duty, “to act ‘reasonably, honourably and in good faith’ in dealings with Indigenous peoples and to make ‘informed decisions’ where their interests are at stake”.

The complexity of the issues at stake here should not be under-estimated and are discussed in more detail elsewhere (Wensing and Taylor, 2012: 22-27).

‘Dealings’ in statutory Aboriginal and Torres Strait Islander land rights lands

There are 24 different Aboriginal and Torres Strait Islander land rights statutes operating across Australia (excluding the Native Title Act 1993 (Cth)), that provide dedicated statutory interests in land. Most of these land rights systems can be classified as ‘acts of grace or favour’ by the respective governments because their origins lie in government responses to the Aboriginal land rights campaigns of the 1960s and 1970s.

The form of title for grants made under these statutory Aboriginal land rights regimes differs within and between jurisdictions, but titles are generally an estate in fee simple or freehold.

But to what extent do these different statutory forms of title enable the landholder to sell, lease, mortgage or dispose of their land? Table 2 is a comparative analysis of the statutory Aboriginal and Torres Strait Islander land rights regimes in northern Australia which lists the different statutes and includes details of the landowner, form of title, and whether private sale, leasing or sub-leasing, or mortgaging is permitted. Positive provisions are shown in green, and restrictive provisions are

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8 The original source for this analysis was the Aboriginal and Torres Strait Islander Social Justice Commissioner’s Native Title Report 2005 (ATSISJC 2006). However, since that time several jurisdictions have made significant amendments to their legislation or introduced new legislation. As stated in the Aboriginal and Torres Strait Islander Social Justice Commissioner’s Native Report (2006), to ascertain particular details in the different jurisdictions, a closer analysis of the strengths, weaknesses and workability of the existing arrangements is required.
shown in red. It is important to understand that this summary table is highly generalised but is supported by a more comprehensive analysis showing the various restrictions that apply in each case.

The ability of title holders to deal in their land varies within and between jurisdictions. In some cases the land is inalienable and cannot be sold, transferred or otherwise dealt with, except in accordance with the provisions of the relevant legislation.

**Comparative analysis between the Native Title and Statutory Land Rights Regimes**

Row 1 of Table 2 shows the ‘dealings’ provisions under the *Native Title Act 1993* (Cth) are all red. As discussed above, native title is inalienable and not able to be encumbered.

Rows 2 to 9 of Table 2 show that in 1 out of 9 statutory Aboriginal and Torres Strait Islander land rights regimes in northern Australia, land is not able to be alienated or sold.

In relation to leasing or sub-leasing, in 9 out of 9 statutes a legislative basis already exists (mostly with conditions attached) that enables leasehold interests to be created on Aboriginal or Torres Strait Islander land, and in 6 out of 9 statutes the ability to use the leasehold interest as security for a mortgage also exists (generally subject to conditions).

It is also worth noting that in response to the Commonwealth’s and COAG’s Indigenous land tenure reform agenda that emerged in the last decade, only Queensland has enacted specific legislation that enables Aboriginal and Torres Strait Islander lands to be individuated and privately freeholded and then traded in the open market.

Perhaps the ideal situation would be that the private sale column be in red such that the underlying tenure is inalienable and the underlying traditional owner interests remain protected from sale/alienation on the open market, and the leasing/sub-leaseing and mortgaging columns be in green such that the underlying tenure can be put to productive use and be used as equity or security for finance. The existing statutory land rights regimes show that this is possible. However, what needs to be addressed is the fact that most of the statutory land rights regimes are also subject to native title rights and interests, which given the discussion about s.56(5) of the *Native Title Act 1993* (Cth) above, means that native title rights and interests are inalienable and can’t be encumbered.

**So where are land tenure reforms really required?**

I have long stated that I believe there are two elements to *Mabo* (No. 2).

- In substance, the judgement recognised that Eddie Mabo and others on behalf of the Meriam People of Murray Islands in the Torres Strait had prior and continuing occupation and ownership of the Murray Islands.
- In essence, the judgement found that Aboriginal and Torres Strait Islander law and culture is recognised by the common law of Australia. This was a return to the position that British common law and policy had held since before the colonisation of Australia in 1788.
As a consequence, there are now effectively two systems of law and custom in Australia. One deriving from colonisation, the other deriving from the prior traditional ownership of Australia by Aboriginal and Torres Strait Islander people.

I believe these conceptions flag some critical changes to the way we need to think about land.

Aboriginal people have never ceded their lands and Australia has never dealt fairly with the Indigenous people of Australia about the loss of their lands. We can no longer deny that the root of all property in land for non-Aboriginal Australians was acts of dispossession of Aboriginal people – acts of theft – and for which no-one has ever been held responsible (Kerruish and Purdy 1998). As Keenan (2014: 164) rightly observes: ‘the nation’s prosperity is overwhelmingly built on land stolen from Indigenous Australians’.

The High Court of Australia in Mabo (No. 2) did not deal with the question of sovereignty (Ritter 1996: 32; Watson 2002: 259).

From the standpoint of Aboriginal and Torres Strait Islander people, these acts of theft were never in any doubt, but once Australia enacted the Racial Discrimination Act in 1976, the legal denial of the existence of prior Aboriginal ownership of Australia became an international embarrassment.

I agree with Allan Dale’s assessment that ‘we just haven’t paid enough for the land we originally secured from Traditional Owners, let alone the meagre compensation we typically pay to overcome any injury to native title in the determination processes’ (Dale 2014: 130).

I also agree with Valerie Kerruish and Jeannine Purdy (1998) that it is no longer tolerable to continue constructing legal orthodoxies that suit the settler state. For example, the extinguishment and non-extinguishment provisions in the Native Title Act 1993 (Cth) because declarations by government that the extinguishment of native title has occurred (partly or wholly) will not make the laws and customs of Aboriginal and Torres Strait Islander people disappear.

As Robert French J (as he then was) and Graeme Neate have both stated, the term ‘extinguishment’ is just a metaphor for placing limits upon the extent to which recognition will be accorded to Aboriginal and Torres Strait Islander People under Australian law (French J in The Lardill case 2001; Neate 2002: 118).

Regardless of judicial or legislative status, Aboriginal people will always retain their special relationship with and responsibility for land and sea country (Rose 1996; Dodson 1998: 209).

Given the many constraints around native title outcomes, it is a reasonable to ask whether native title holders are feeling somewhat frustrated or disillusioned because they are not able to use their property rights to engage in the modern economy on their terms when opportunities arise and without having to surrender and permanently extinguish their hard won native title rights and interests. Smith (2001: 2) likens this to replacing ‘the historical fiction of terra nullius with the legal fiction of extinguishment’. Little wonder that some commentators (Ring 2006) see native title as a ‘dodgy conveyance’.
It is time to ‘puncture some legal orthodoxies’ in relation to property and land tenure (McHugh 2011). Let me make some suggestions.

Australian Governments in all jurisdictions and of all political persuasions and complexions need to come to terms with the fact that ‘inalienable communal title is a fundamental feature of Indigenous rights law’ and that ‘transfers of rights in land determined by traditional processes rather than exchange of title by sale or other means’ (North Australian Indigenous Experts Panel 2012: 26).

We should also not be concerned about Indigenous people’s interests and aspirations as the North Australian Indigenous Experts Panel (2012: 7) states that ‘Indigenous interests and the interests of the wider Australian society are not inherently in conflict’.

As Dale (2014: 129) rightly observes:

‘Real wealth and employment generating opportunities for traditional owners will start emerging from all Australian’s having a more generous view of the reality of existing traditional owner rights and linkages to country, even where they are not clearly defined in law. With respect to land dealings in northern Australia, a cultural change like this could shift from a ‘glass half full’ approach to fostering Indigenous development; from perhaps shirking the responsibilities we have as a society to fairly reconciling past and continuing Aboriginal dispossession’.

What this means is that real change has to happen inside the Crown’s land tenure system. Let’s turn the legal principles of property relations, inalienability and extinguishment on their proverbial heads. Let’s develop a form of leasehold which will allow the native title holders to determine the terms and conditions for development on their lands so they can partake in the risks and benefits arising from land development and resource exploitation.

Tony McAvoy (2014) believes that all Aboriginal and Torres Strait Islander people should aspire to ownership of their lands, planning control, self-determination; economic independence, and full compensation. I agree. And my advice to native title holding groups is to make the most of any circumstances with respect to reforming State/Territory land tenure systems, otherwise the opportunity will be lost for many decades and possibly generations to come. Use this opportunity wisely to:

- make the most of being able to revive Aboriginal and Torres Strait Islander law and custom;
- take ownership of customary land in the strongest form of tenure possible from the State (land ownership);
- be in control of land uses on Aboriginal and Torres Strait Islander lands (land use planning control);
- be in control of your own future and destiny (self-determination);
- become economically independent on your own terms (economic independence); and
- seek full compensation for any loss, diminution or extinguishment of native title rights and interests (full compensation).
Otherwise the essence of Aboriginal and Torres Strait Islander community life and culture will disappear.

I trust I have challenged you to think differently about these important issues and I look forward to puncturing some legal orthodoxies relating to property, inalienability, extinguishment and non-extinguishment of customary rights to land.
Figure 1: A snapshot of Indigenous held land from 1788 to 2013.
Figure 2: Indigenous land titling under three tenures
Figure 3: Distribution of Indigenous population from the 2011 Census and Indigenous land titles (2013)
Table 2: Summary table of dealing provisions in the *Native Title Act 1993* (Cth) and the statutory Aboriginal and Torres Strait Islander land rights regimes in Northern Australia (as at November 2014)

<table>
<thead>
<tr>
<th>Statute</th>
<th>Landowner</th>
<th>Form of Title</th>
<th>Is private sale permitted?</th>
<th>Is Leasing or sub-leasing permitted?</th>
<th>Is Mortgaging permitted?</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTH <em>Native Title Act 1993</em> (Cth)</td>
<td>Common law holders as determined by the Federal Court of Australia and held in trust by a registered native title body corporate</td>
<td>Recognition of the communal, group or individual rights and interests in accordance with s.223 of the NTA.</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>NT <em>Aboriginal Land Rights (Northern Territory) Act 1976</em> (Cth)</td>
<td>Aboriginal Land Trusts-consisting of Aboriginal people resident in the regional Land Council area</td>
<td>Inalienable Freehold Title</td>
<td>No</td>
<td>Yes of leasehold interest</td>
<td>Yes of leasehold interest</td>
</tr>
<tr>
<td>NT <em>Pastoral Land Act 1992</em> (NT)</td>
<td>Aboriginal Association</td>
<td>Restricted freehold</td>
<td>No</td>
<td>Yes, with restrictions</td>
<td>Yes, with restrictions</td>
</tr>
<tr>
<td>QLD <em>Aboriginal and Torres Strait Islander Land (Providing Freehold) Act 2014</em> (Qld)</td>
<td>Specified Aboriginal or Torres Strait Islander people</td>
<td>Freehold</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>QLD <em>Aboriginal Land Act 1991</em> (Qld)</td>
<td>RNTBCs, Trustees or Aboriginal people</td>
<td>Inalienable freehold or leasehold</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>QLD <em>Torres Strait Islander Land Act 1991</em> (Qld)</td>
<td>RNTBCs, Trustees or Torres Strait Islander people</td>
<td>Inalienable freehold or leasehold</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>QLD <em>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</em> (Qld)</td>
<td>Specified Aboriginal or Torres Strait Islander people</td>
<td>Leasehold</td>
<td>Transferable, but not sale</td>
<td>Yes</td>
<td>Yes, subject to conditions</td>
</tr>
<tr>
<td>QLD <em>Land Act 1994</em> (Qld)</td>
<td>Trustee</td>
<td>Reserve or fee simple in trust</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>WA <em>Aboriginal Affairs Planning Authority Act 1972</em> (WA)</td>
<td>Aboriginal Lands Trust</td>
<td>Crown Reserve for the 'use and benefit of Aboriginal inhabitants'.</td>
<td>No</td>
<td>Yes, subject to conditions</td>
<td>Yes, subject to conditions</td>
</tr>
<tr>
<td>WA <em>Land Administration Act 1997</em> (WA)</td>
<td>Aboriginal person or approved Aboriginal corporation</td>
<td>Conditional freehold or lease. &amp; Crown reserves for the 'use and benefit of Aboriginal inhabitants'.</td>
<td>No</td>
<td>Yes, subject to conditions</td>
<td>Yes, subject to conditions</td>
</tr>
</tbody>
</table>
References

Cases
Mabo v the State of Queensland [No. 2] (1992) 175 CLR1
Pareroultja v Tickner (1993) 117 ALR 206
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Native Title Act 1993

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Aboriginal Affairs Planning Authority Act Regulations 1972 (WA)
Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014 (Qld) – Explanatory Notes
Aboriginal and Torres Strait Islander Land (Providing Freehold) Act 2014 (Qld)
Aboriginal Communities Act 1979 (WA)
Aboriginal Housing Legislation Amendment Act 2010 (WA)
Aboriginal Lands (Aborigines’ Advancement League) (Watt Street, Northcote) Act 1982 (Vic)
Aboriginal Land Act 1970 (Vic)
Aboriginal Land Act 1991 (Qld)
Aboriginal Land (Manatunga Land) Act 1992 (Vic)
Aboriginal Land (Northcote Land) Act 1989 (Vic)
Aboriginal Land Rights Act 1983 (NSW)
Aboriginal Land Rights Act 1995 (Tas)
Aboriginal Lands Act 1991 (Vic)
Aboriginal Lands Trust Act 1966 (SA)
Aboriginal Lands Trust Act 2013 (SA)
Aborigines and Torres Strait Islanders (Land Holding) Act 1985 (Qld)
Acquisition of Land Act 1967 (Qld)
Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)
Land Act 1994 (Qld)
Land Administration Act 1997 (WA)
Land Administration Regulations 1998 (WA)
Maralinga Tjarutja Land Rights Act 1984 (SA)
National Parks and Wildlife Act 1974 (NSW)
Nitmiluk (Katherine Gorge) National Park ACT 1989 (NT)
Parks and Reserves (Framework for the Future) Act 2003 (NT)
Parks and Reserves (Framework for the Future) (Revival) Act 2005 (NT)
Pastoral Land Act 1992 (NT)
Torres Strait Islander Land Act 1991 (Qld)
Transfer of Land Act 1893 (WA)


http://theconversation.edu.au/a-matter-of-trust-what-we-can-learn-from-the-treaty-of-waitangi-5189?utm_medium=email&utm_campaign=Latest+from+The+Conversation+for+February+7+2012&utm_content=Latest+from+The+Conversation+for+February+7+2012+CID_e0a60071c69ca92e14e8d6b24e40e3c0&utm_source=campaign_monitor&utm_term=A+matter+of+trust+what+we+can+learn+from+the+Treaty+of+Waitangi


