

Native title SNAPSHOT

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THE DECISION IN *MABO V QUEENSLAND (No 2)* [1992] HCA 23; [1992] 175 CLR 1 (*Mabo*) overturned the doctrine that Australia was *terra nullius* - a land belonging to no one - and recognised native title through the common law in Australia. In response, the Federal Government developed the national *Native Title Act 1993 (Cth) (NTA)*, which came into force in 1994. The NTA established a statutory regime for claiming and recognising native title land in Australia.

In its first 8 years the native title system saw many changes and developments; however, there were few native title determinations prior to June 2001. Figure 1 from the National Native Title Tribunal (NNTT) 2000-01 Annual Report shows the slow growth in the number of native title determinations across Australia between 1992 and 2001.

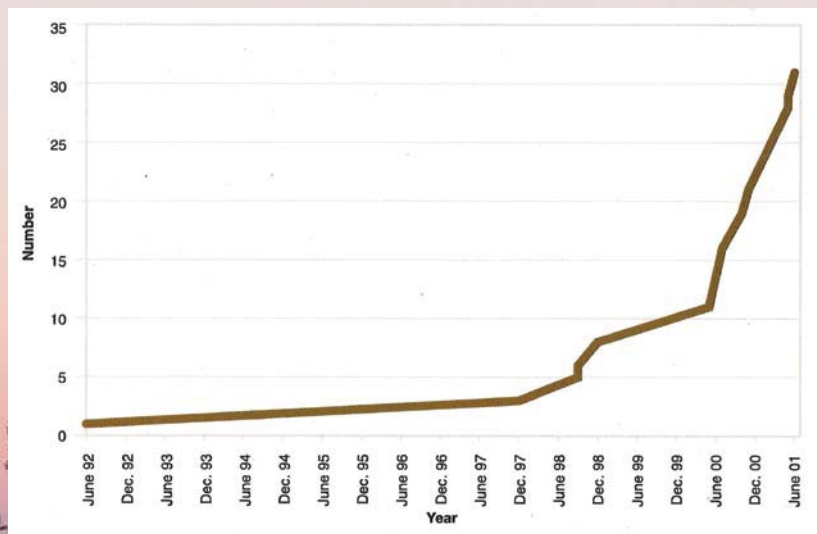
According to the NNTT registers, although there were over 1000 claimant applications lodged across Australia and the Torres Strait Islands during this period, only 13 of these claims resulted in a consent determination prior to the year 2000. The clear majority, 10 of the 13 claims, were determined

in Queensland (QLD), although 7 were Torres Strait Island claims, following on from *Mabo*. The only claim determined in New South Wales (NSW) during this period, *Dunghutti People v State of New South Wales* [1997] FCA 1624, was also the first consent determination under the NTA. There were only 2 cases finalised in Western Australia (WA) prior to 2000. Competing legislation, the *Land (Titles and Traditional Usage) Act 1993 (WA)* (repealed in 1995) which sought to extinguish native title in WA and replace it with a form of statutory title, and after, the

Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) ('TNTA') which could extinguish native title rights via the validation of past acts, resulted in a slow start for native title in WA. The land rights regimes (included below) impacted on the lack of early native title claims in the Northern Territory (NT) and South Australia (SA).

Due to a number of reasons around changes to legislation, state policy and native title practice, the number of native title determinations rose sharply after June 2000.

Figure 1: Growth in number of native title determinations (claimant and non-claimant) including proposed, draft and/or conditional determinations to 30 June 2001



HOW MUCH (%) OF EACH STATE & TERRITORY WAS UNDER NATIVE TITLE?

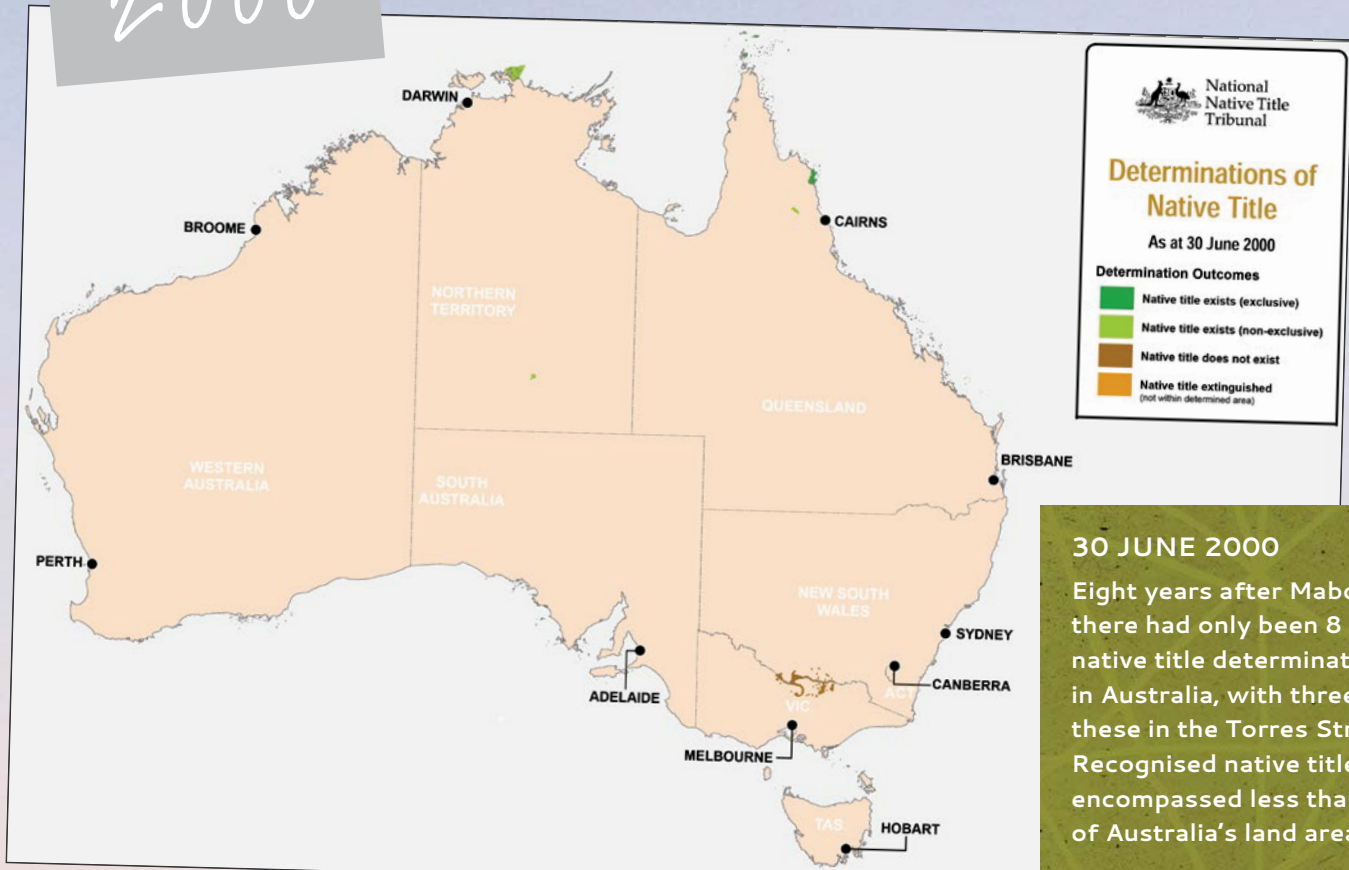
	2000	2005	2010	2015
ACT	-	-	-	-
New South Wales	-	-	0.1	0.3
Northern Territory	-	0.6	1.4	17.6
Queensland	0.1	1.2	2.0	25.3
South Australia	-	0.2	7.0	52.7
Tasmania	-	-	-	-
Victoria	-	-	0.8	6.6
Western Australia	-	22.7	32.8	44.2
Australia	-	7.9	12.6	30.3

HOW HAS THE DISTRIBUTION OF NATIVE TITLE LAND CHANGED OVER TIME?

	2000	2005	2010	2015
ACT	-	-	-	-
New South Wales	-	-	0.1	0.1
Northern Territory	7.7	1.3	1.9	10.2
Queensland	92.3	3.5	3.6	18.8
South Australia	-	0.3	7.1	22.2
Tasmania	-	-	-	-
Victoria	-	-	0.2	0.6
Western Australia	-	94.9	85.9	48.0

Each figure is the percentage of all native title land which was located in that state at the time; e.g. in 2010, 85.9% of land under native title in Australia was in WA.

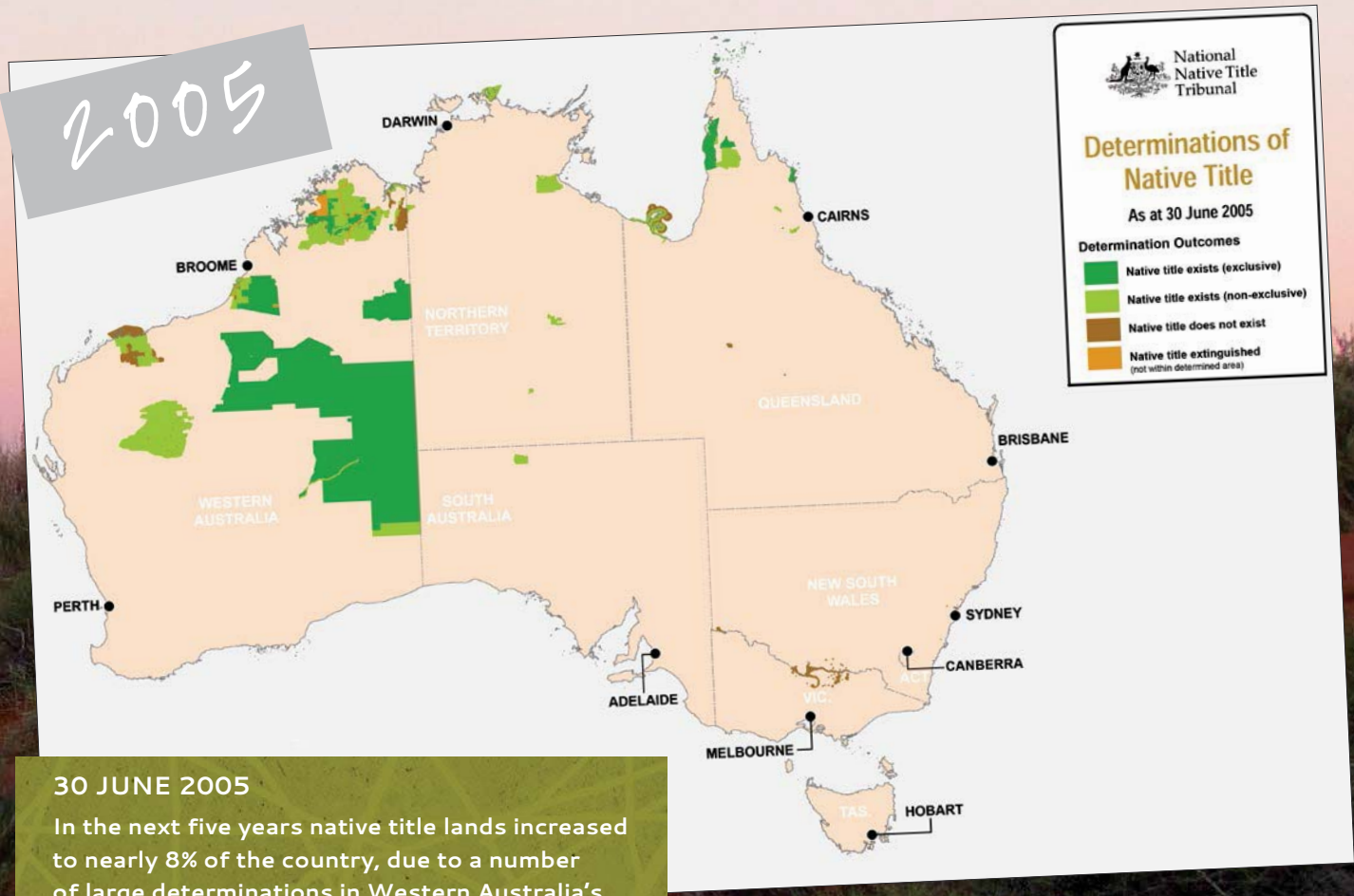
2000



30 JUNE 2000

Eight years after Mabo, there had only been 8 native title determinations in Australia, with three of these in the Torres Strait. Recognised native title encompassed less than 1% of Australia's land area.

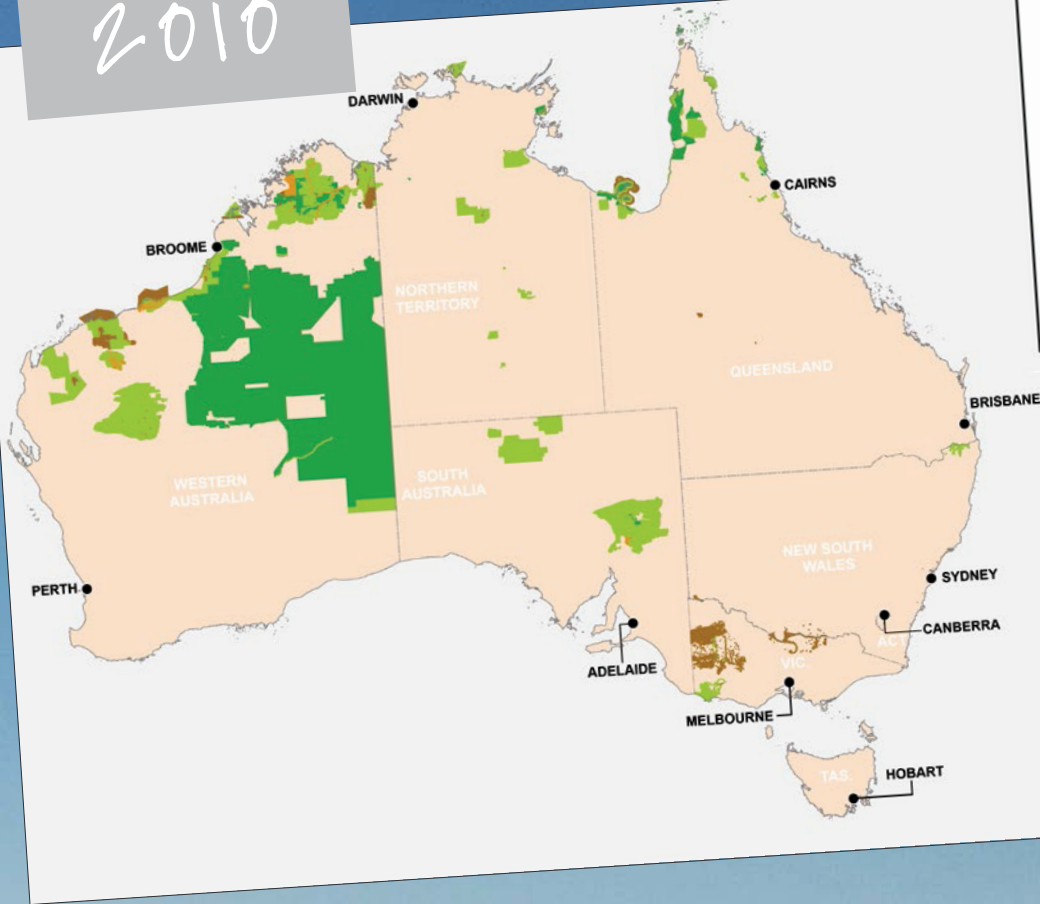
2005



30 JUNE 2005

In the next five years native title lands increased to nearly 8% of the country, due to a number of large determinations in Western Australia's Central Desert, Kimberley and Pilbara regions.

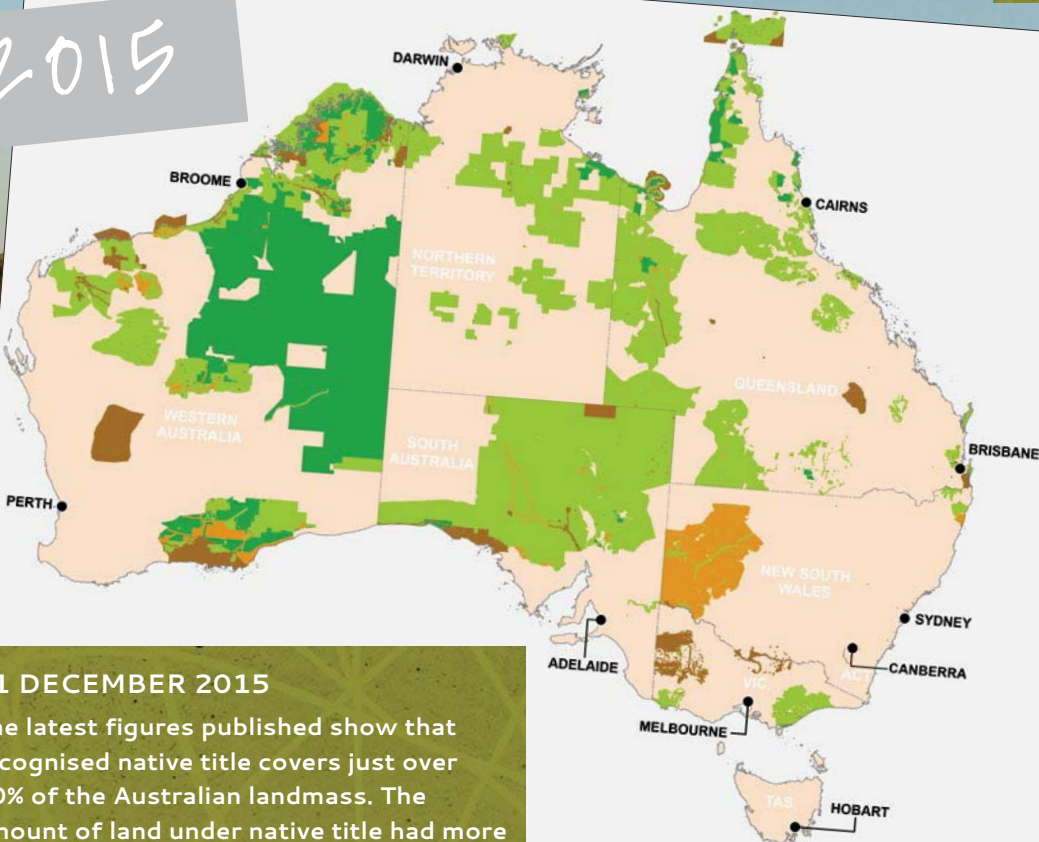
2010



30 JUNE 2010

By this point native title was recognised across a little over 12% of the country. Large determinations in South Australia and Western Australia made up the bulk of the increase since 2005.

2015



31 DECEMBER 2015

The latest figures published show that recognised native title covers just over 30% of the Australian landmass. The amount of land under native title had more than doubled since 2010, mostly due to determinations in the Northern Territory, Queensland and South Australia.

Native title across the states and territories

WA

Almost half of recognised native title land can be found in Western Australia, and over 70% is exclusive possession, by far the largest proportion of any state or territory. By 2015, there had been 47 native title determinations within WA, all of which are claimant determinations, and 35 PBCs established.

SA

More than half of South Australia's land area is under native title, although 99.9% of it is non-exclusive. By December 2015, there were 26 native title determinations in South Australia, comprising 25 claimant determinations and one compensation determination that was resolved in a settlement. To date, 15 PBCs have been established.

A significant area of the state is also covered by three different land rights regimes.

QLD

By December 2015, there had been 123 native title determinations within Queensland, comprising 117 claimant determinations and six non-claimant determinations, with 70 PBCs established – the most set up in any state.

ACT & Tasmania

To date, there have not been any successful native title determinations in the ACT or Tasmania. Both the ACT and Tasmania, do, however, have land co-management plans with Aboriginal representative organisations.

NT

In the Northern Territory, native title coexists with the land rights regime established by the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), under which 50% of the NT has been returned to traditional owners. In December 2015, native title had been recognised in 78 of the 79 consent claimant determinations and 8 of the 9 litigated claimant determinations, with a further 86 claims awaiting finalisation. At that time, 19 PBCs were set up on behalf of the native title holders.

VIC

All of the determined native title lands in Victoria are non-exclusive with 4 PBCs set up on behalf of the native title holders. In December 2015 there had been seven native title determinations in Victoria, all of which are claimant determinations.

Other Indigenous land has been claimed under the *Traditional Owner Settlement Act 2010* (Vic).

NSW

Of all the states which have seen successful native title determinations, New South Wales has the smallest area of land covered by native title. In December 2015, native title had been recognised in 8 of the 9 consent determinations to date, not recognised in 2 litigated determinations and a further 18 claims are awaiting determination. By 2015, 6 PBCs had been established. The relatively small area of native title coverage in the State is in part due to the land rights regime in place: The *Aboriginal Land Rights Act 1983* (NSW) (ALRA).