

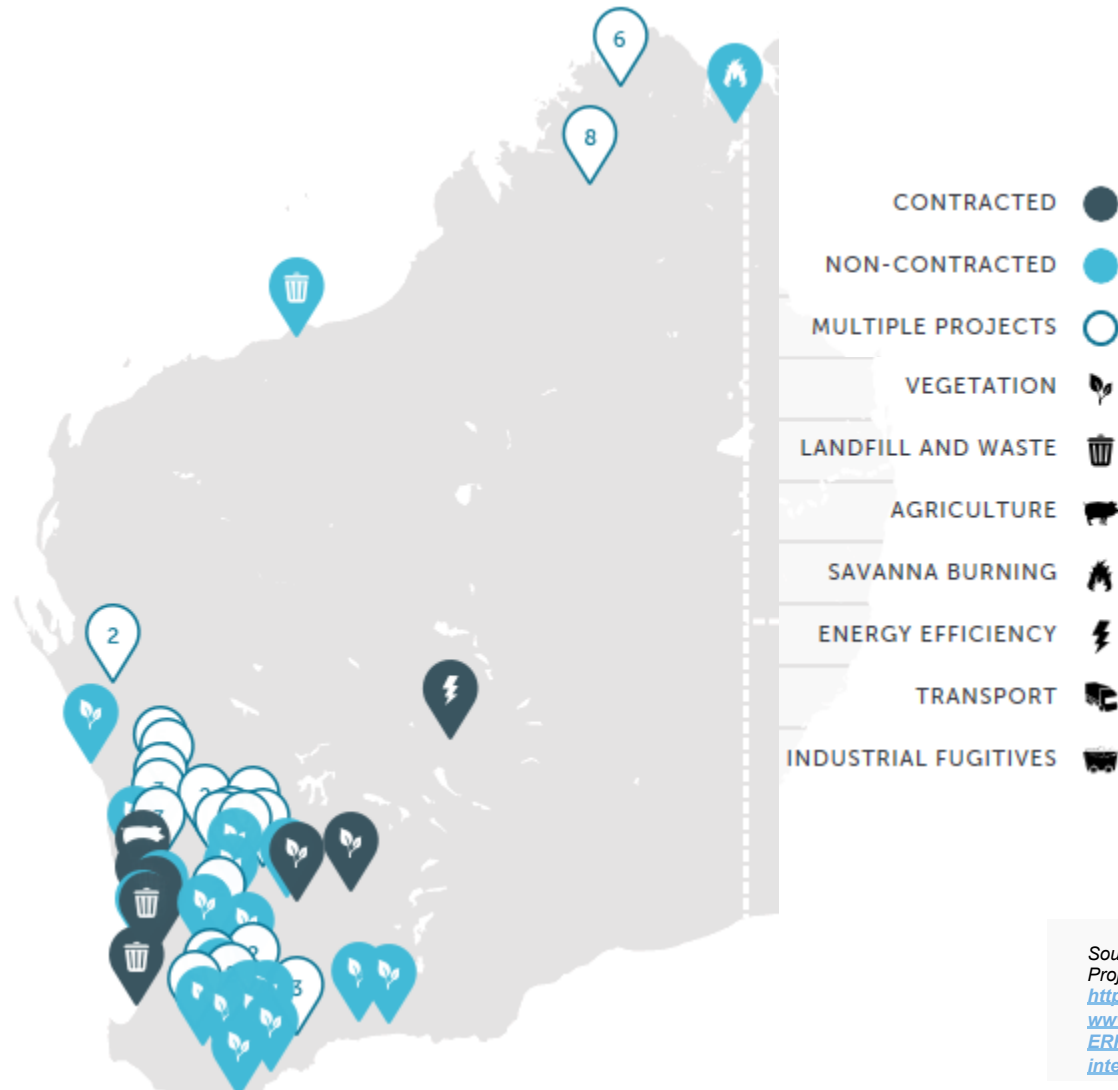


# **CARBON FARMING AND NATIVE TITLE**

Outback Carbon Farming Conference

**Wednesday, 17 August 2016**

# The opportunity



Source: Clean Energy Regulator ERF Project Map. Available at <http://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/interactive-map>



National  
Native Title  
Tribunal

## Determinations of Native Title and Claimant Applications

Schedule of Applications - Federal Court

As at 30 June 2016

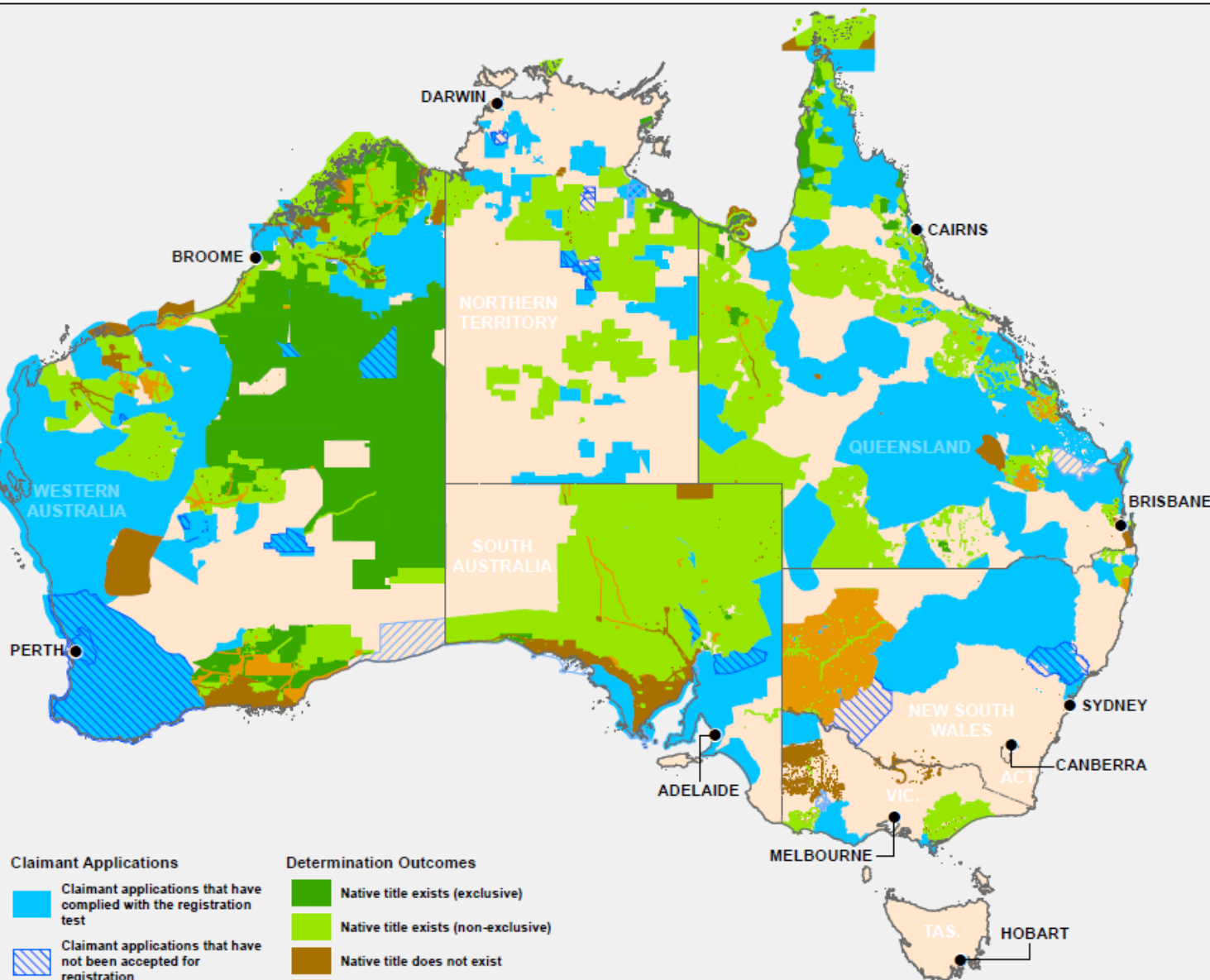
Some or parts of some determinations may not yet be in effect or on the National Native Title Register (NNTTR). The court may decide that the determination of native title will take effect conditional upon some future event occurring, for example, the registration of an Indigenous Land Use Agreement 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 NNTTR until the condition has been met.  
Areas not claimed such as private freehold, within an application are not necessarily depicted.

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.



With the exception of the Commonwealth Coat of Arms and where otherwise noted, this map is provided under a Creative Commons Attribution 3.0 Australia license:  
<http://creativecommons.org/licenses/by/3.0/au/>

© Commonwealth of Australia 2016  
The Registrar, the National Native Title Tribunal and its staff, members and agents and the Commonwealth (collectively the Commonwealth) accept no liability and give no undertakings, guarantees or warranties concerning the accuracy, completeness or fitness for purpose of the information provided.  
In return for you receiving this information you agree to release and indemnify the Commonwealth and third party data suppliers in respect of all claims, expenses, losses, damages and costs arising directly or indirectly from your use of the information and the use of the information you obtained by any third party.



### Claimant Applications

- Claimant applications that have complied with the registration test
- Claimant applications that have not been accepted for registration
- Claimant applications that are going through the registration test

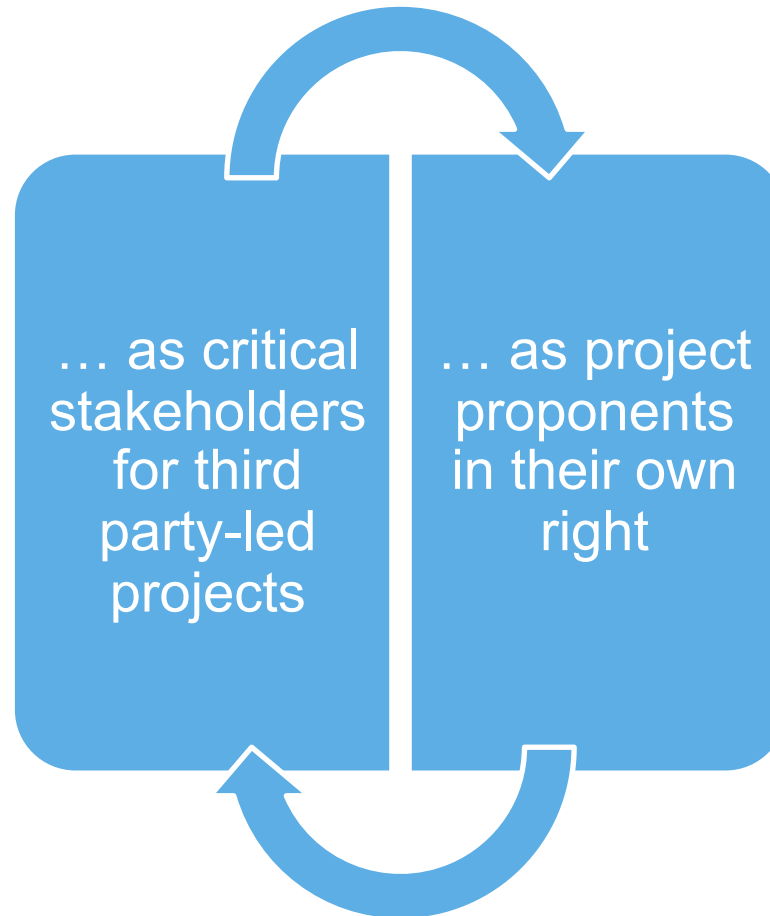
### Determination Outcomes

- Native title exists (exclusive)
- Native title exists (non-exclusive)
- Native title does not exist
- Native title extinguished (Not within determined area)

### Percentage of land covered

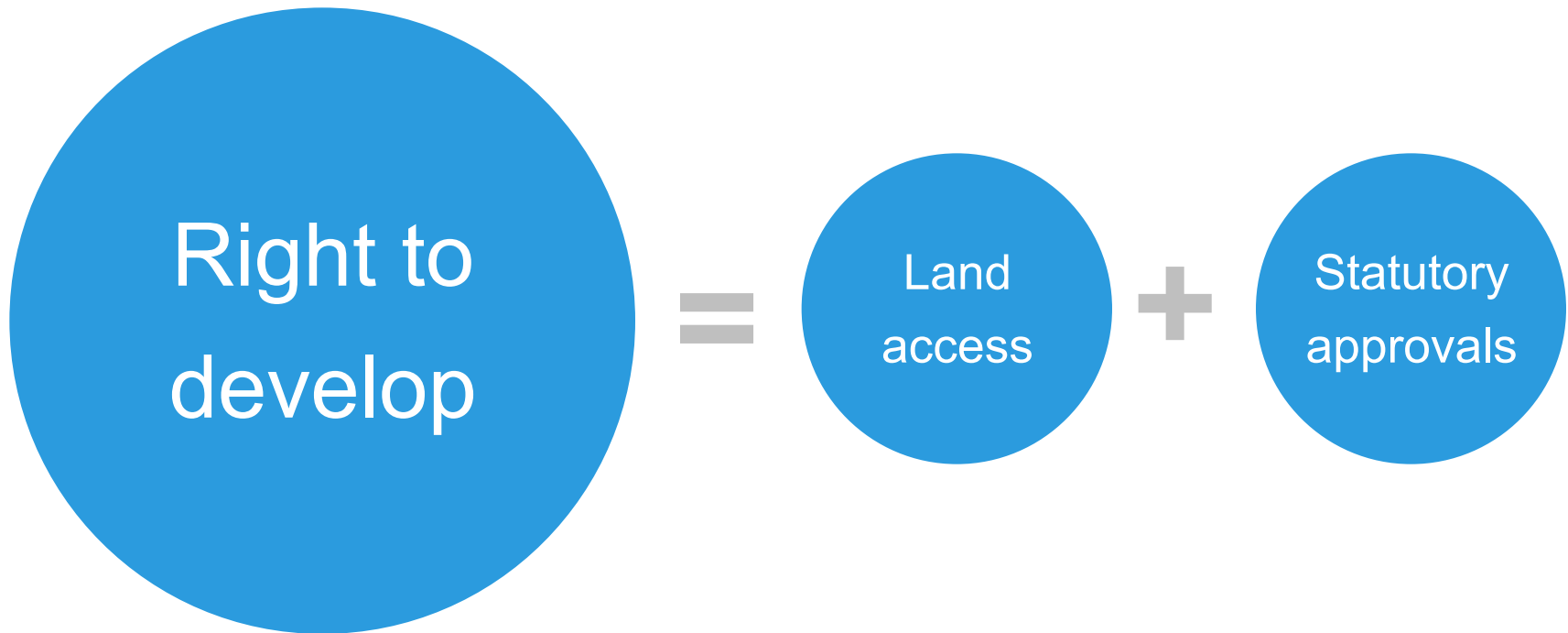
Jurisdiction	Subject to a determination	Subject to a claimant application
ACT	0.0%	0.0%
NSW	0.5%	33.8%
NT	18.9%	14.6%
QLD	27.2%	44.4%
SA	57.9%	16.7%
TAS	0.0%	0.0%
VIC	11.4%	13.1%
WA	47.5%	34.8%
<b>Total</b>	<b>32.8% (Aust)</b>	<b>30.0% (Aust)</b>

# Interfacing with native title groups





# Project development requirements



# Land access for third parties

- Any proposed grant on Crown land in which native title may persist must have regard to the future act processes of the *Native Title Act 1993* (Cth)
- Low impact process cannot facilitate grants that continue after a determination that native title exists
- Other grants over pastoral leases limited to removal of timber, sand, gravel
- Processes applicable to mining tenure, which rely on a freehold test, cannot be applied to grants specific to Crown land
- Remaining options are compulsory acquisition or voluntary indigenous land use agreement (ILUA)

# Native title under the CFI Act

- Registered native title bodies corporate (RNTBCs) hold eligible interest
- RNTBCs taken to be project proponent for area-based offsets projects:
  - on exclusive possession native title land
  - otherwise where native title holder has legal right to carry out the project
- Application for eligible offsets project declaration must be accompanied by any relevant ILUA
- Declaration may be made subject to written consent from eligible interest holder (e.g. RNTBC)



National  
Native Title  
Tribunal

## Determinations of Native Title

As at 30 June 2016

### Determination Outcomes

- Native title exists (exclusive)
- Native title exists (non-exclusive)
- Native title does not exist
- Native title extinguished  
(Not within determined area)

Some or parts of some determinations may not yet be in effect or on the National Native Title Register (NNTTR). 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 NNTTR 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.

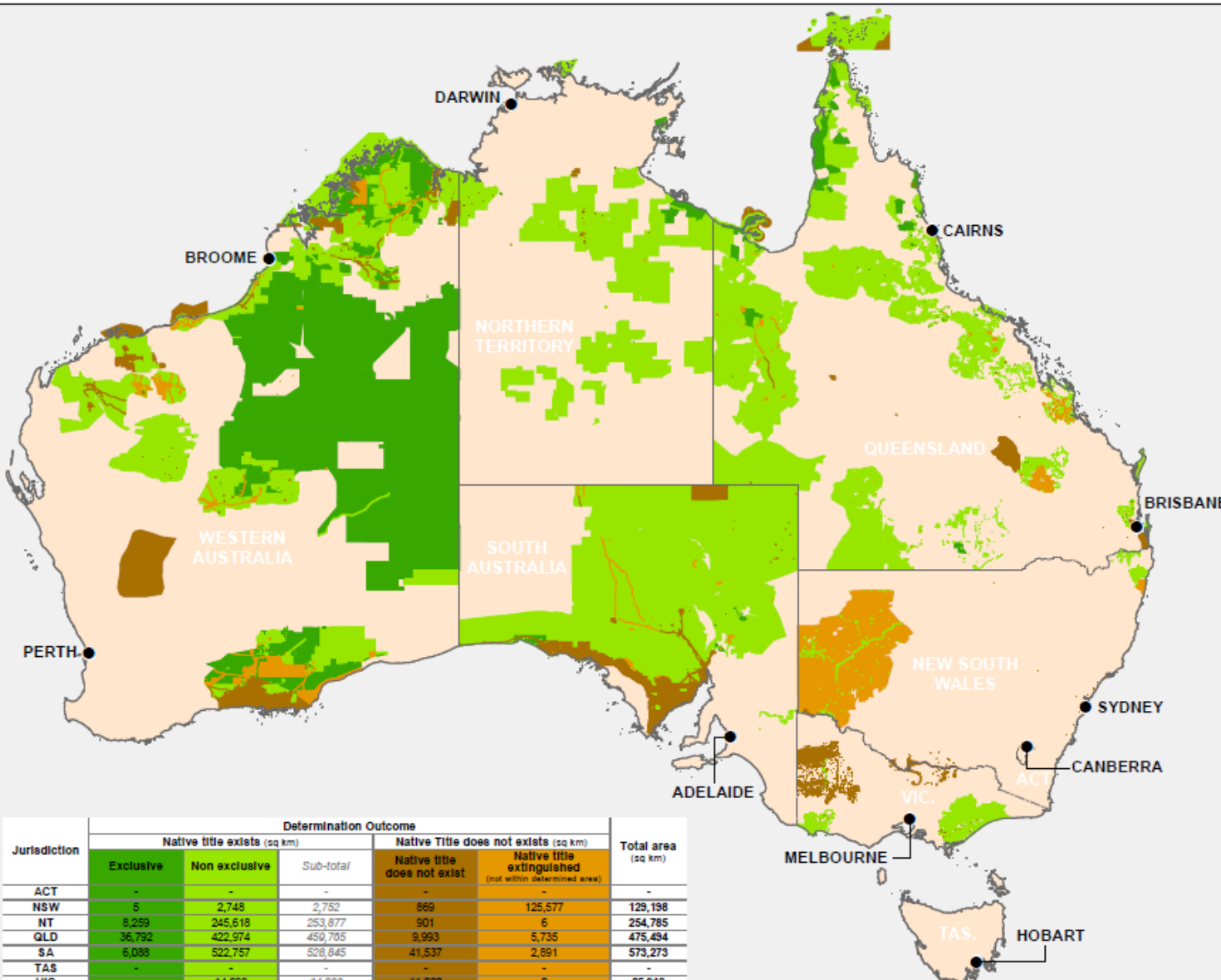


With the exception of the Commonwealth Coat of Arms and where otherwise noted, this map is provided under a Creative Commons Attribution 3.0 Australia license.  
<http://creativecommons.org/licenses/by/3.0/au/>

© Commonwealth of Australia 2016

The Registrar, the National Native Title Tribunal and its staff, members and agents and the Commonwealth (collectively the Commonwealth) accept no liability and give no undertakings, guarantees or warranties concerning the accuracy, completeness or fitness for purpose of the information provided.

In return for you receiving this information you agree to release and indemnify the Commonwealth and third party data suppliers in respect of all claims, expenses, losses, damages and costs arising directly or indirectly from your use of the information and the use of the information you obtained by any third party.



Jurisdiction	Determination Outcome					Total area (sq km)
	Native title exists (sq km)			Native Title does not exist (sq km)		
	Exclusive	Non exclusive	Sub-total	Native title does not exist	Native title extinguished (not within determined area)	
ACT	-	-	-	-	-	-
NSW	5	2,748	2,752	869	125,577	129,198
NT	8,259	245,618	253,877	901	6	254,785
QLD	36,792	422,974	459,765	9,993	5,735	475,494
SA	6,088	522,757	528,845	41,537	2,891	573,273
TAS	-	-	-	-	-	-
VIC	-	14,899	14,899	11,020	0	25,919
WA	800,882	321,010	1,121,891	78,530	20,728	1,221,150
<b>Total (land)</b>	<b>852,025</b>	<b>1,530,005</b>	<b>2,382,030</b>	<b>142,850</b>	<b>154,937</b>	<b>2,679,818</b>
Offshore	-	70,645	70,645	23,595	38	100,278



# Native title proponents

- **Exclusive possession native title** – right of possession, occupation, use and enjoyment as against the whole world...
  - ... including the right to access and take **for any purpose** the resources of the land and waters
  - ... including the right to use the resources of the land for **personal, domestic and communal needs**
- **Supplementary tenure** – when, what and why?

# Rangelands reform

- Existing tenure options **limited**
- Lease for any purpose 'principally consistent with the preservation of the rangelands as a natural resource'
- Grant of lease will be a **future act**, 'most likely settled through negotiation of an ILUA'
- State 'unlikely' to provide financial support, will provide **negotiation guidelines** and **template ILUA**

# Practical implications

- Some **limitations inherent** in existing frameworks
- Rangelands reforms, if passed, have **significant potential to support development of carbon farming projects** in the rangelands
- **ILUAs critical** to grant of rangelands leases
- Whether third party-led or native title holder-led, development of carbon farming projects will depend on successful partnerships with native title holders – focusing on **communication, collaboration** and **consent**



One key element identified by the [Rangelands Development Expert Advisory Group, 2015] was the need to engage better with native title holders and claimants, who must be a partner in any new activities in the Rangelands for them to succeed.

Department of Lands (2016),  
*Land Administration Amendment Bill 2016 Consultation Paper*





DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at [www.dlapiper.com](http://www.dlapiper.com).

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2016 DLA Piper. All rights reserved.