

# Land rights and native title – what's the difference?

Land rights and native title both formally recognise Aboriginal rights in land. But what is the difference between the two?

Join now

Share

Last updated: 13 August 2020 • 5 min read

Author: [Jens Korff](#)

## Contents:

[Selected statistics](#)

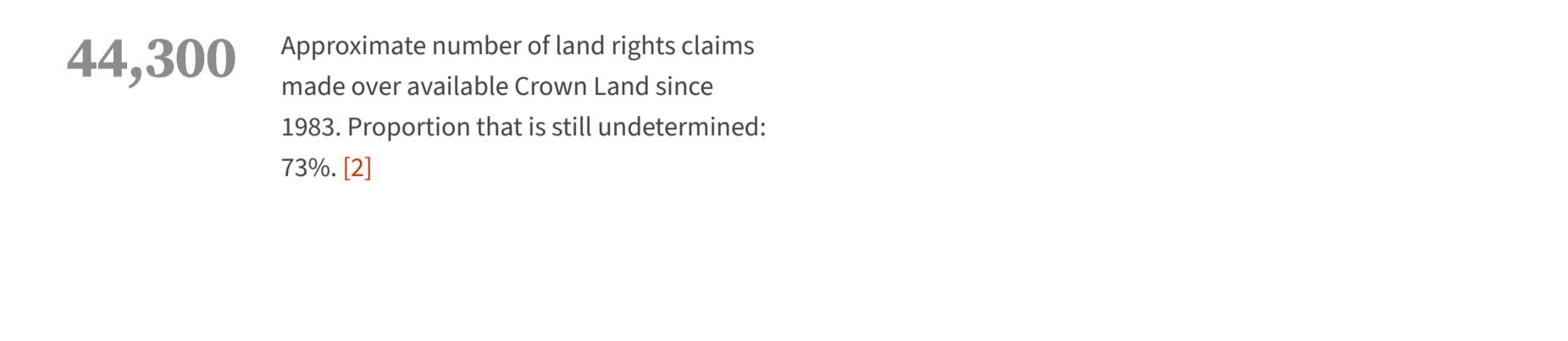
[Land rights and native title comparison](#)

[Map of land rights and native title in Australia](#)

[Land rights & native title percentage map](#)



## Selected statistics



## Land rights and native title comparison

Both [land rights](#) and [native title](#) are a result of legislation by the Australian government. They help Aboriginal people to have their rights in land recognised. Both operate under different laws (or acts) and differ in the rights they can provide. <sup>[3]</sup>

	Land rights	Native title
What is it?	The <b>return of</b> certain Crown lands to Aboriginal peoples <b>as compensation</b> for dispossession and the resulting ongoing disadvantage suffered by Aboriginal peoples.	The <b>recognition of</b> the pre-existing traditional and customary <b>rights and interests</b> Aboriginal peoples have in lands.
When was it introduced?	The NT Parliament passed the <i><b>Aboriginal Land Rights (Northern Territory) Act 1976</b></i> (ALRA). The ALRA set out the functions and responsibilities of Aboriginal Land Councils which act as a lobby on land rights. Other states ratified similar legislation. <sup>[4]</sup>	Native title was first recognised by the courts in the <b>1992 Mabo decision</b> . The Commonwealth then passed the <i><b>Native Title Act 1993</b></i> (NTA) to put the decision into law. The Act applies to all of Australia.
Is traditional connection required?	<b>No</b> . Traditional connection does not need to be established for a land claim to be successful. The ALRA also allows to return culturally <i>significant</i> lands to people with a connection to that place.	<b>Yes</b> . Native title can only exist where Aboriginal people could prove to the Federal Court that they have maintained a <b>continuing connection</b> with an area via cultural practices, regular access and traditions.
Who can make a claim?	Aboriginal <b>Land Councils</b> constituted under the ALRA.	A native title <b>claim group's nominated representatives</b> . This will usually be a group of people, not an individual.
Who determines the claim?	The <b>government minister</b> who applies the <i>Crown Lands Act</i> of the particular state or territory.	The <b>Federal Court of Australia</b> .
What land can successfully be claimed?	Crown lands that are not lawfully being used or occupied (as town, pastoral or private land is), not (likely) needed for residential or essential public purposes and not the subject of a registered native title claim or determination.	Vacant Crown land, National Parks, State Forests, Crown Reserves, some types of non-exclusive leases, land covered by permissive occupancies and licenses (e.g. towns, farms), inland waters and the sea.
Does it mean ownership?	<b>Yes</b> . Aboriginal people generally receive <b>full or freehold title</b> to land. This allows them to control entry to this land with permits. Sometimes land may be held in leasehold.	<b>No</b> . In most cases native title is recognised to <b>co-exist alongside other rights</b> and interests in the same area (non-exclusive possession). This can mean Aboriginal people can legally access and use the land for e.g. camping, hunting, fishing and other cultural activities. Only in some cases do they get rights akin to full ownership (exclusive possession). There is no right to control entry to this land.
Who holds the rights?	<b>Aboriginal Land Councils</b> recognised under the ALRA.	Either the <b>native title holders</b> or a Prescribed Body Corporate (PBC) holds the title <b>in trust</b> or as an agent.

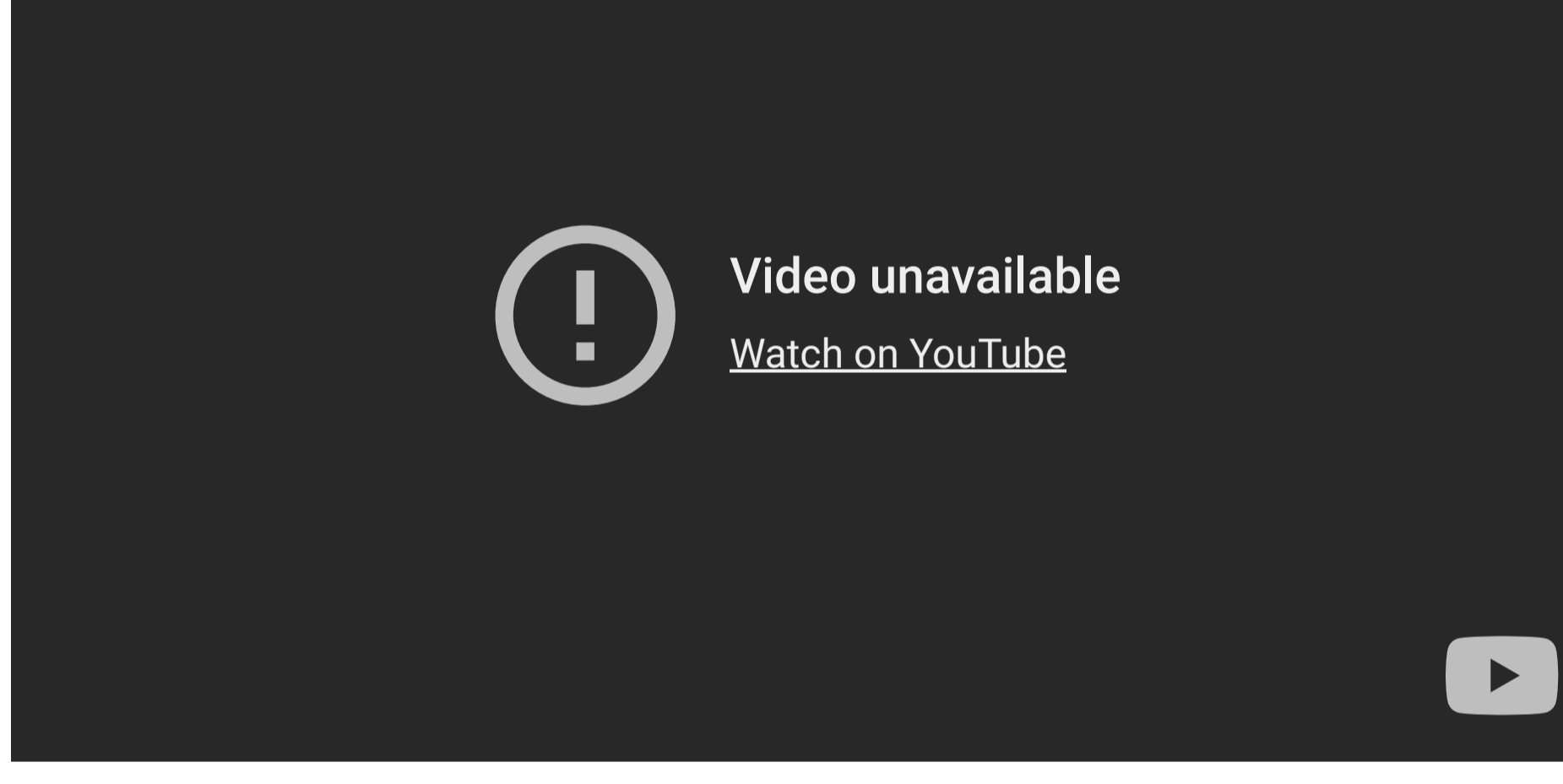
Note: Land rights and native title can co-exist under certain conditions on the same land.

This can cause problems when land councils want to develop the land they hold, for example erect a building. The land council has to first clarify that native title doesn't exist on that land. If it does exist, the land council has to get an order extinguishing native title which can be lengthy and expensive, delaying any development. <sup>[5]</sup>

The two laws also mean that there can be two groups competing about who speaks for country and how to represent and advocate their interests, potentially creating conflict among Aboriginal stakeholders.

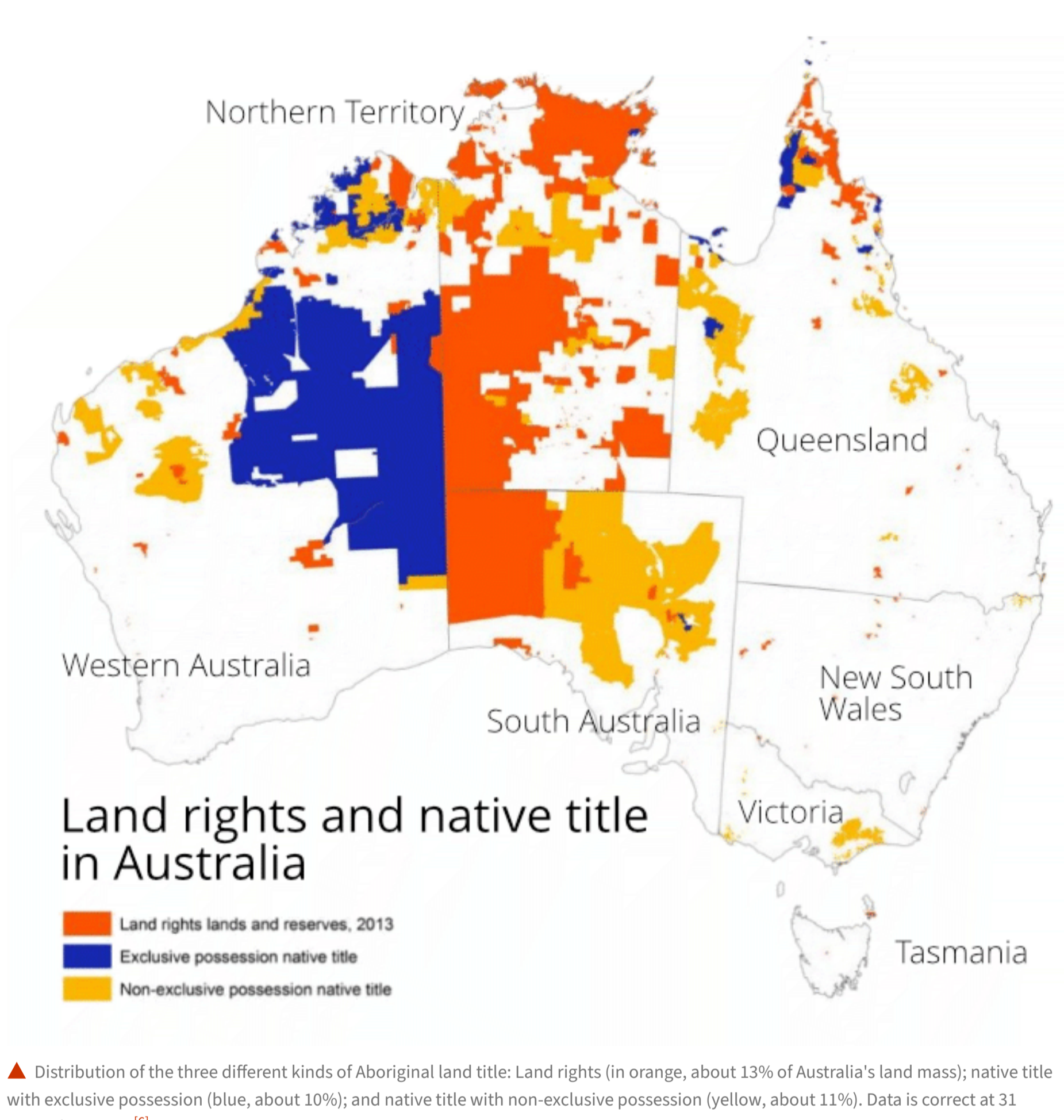
### Video: Land rights and native title explained

Dr Heidi Norman, one of the ABC's humanities researchers, explains the difference between land rights and native title (90 secs).



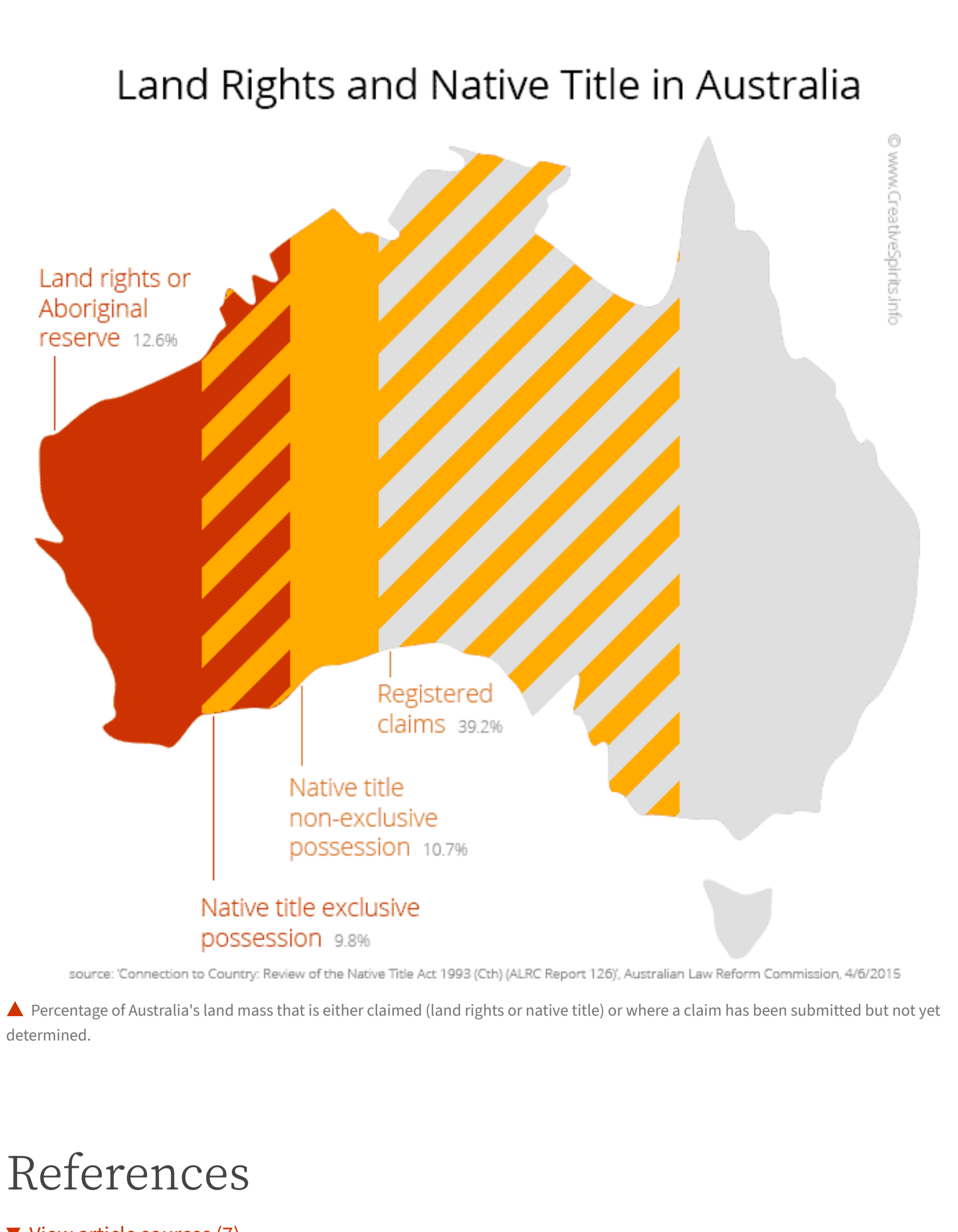
## Map of land rights and native title in Australia

The map below shows the distribution of land rights (in orange) and native title (in blue and yellow) in Australia in 2013. <sup>[6]</sup>



## Land rights & native title percentage map

The map below shows the percentage of the Australian land mass that has been claimed by land rights (red), has been determined to be exclusive native title (red and yellow stripes), or non-exclusive native title (yellow) and the percentage that has been claimed but not determined yet (yellow stripes). <sup>[7]</sup>



## References

▼ [View article sources \(7\)](#)

- <sup>[1]</sup> '1301.0 - Year Book Australia, 2002', Australian Bureau of Statistics, 25/01/2002
- <sup>[2]</sup> <sup>[2a]</sup> 'Land rights and native title aren't the same — and the two systems could spark Indigenous conflict', ABC News 16/11/2018
- <sup>[3]</sup> 'Land Rights and Native Title in NSW - A Guide for the Community', NSW Aboriginal Land Council, July 2014
- <sup>[4]</sup> Other legislation includes: Aborigines Act 1889 (WA), Pitjantjatjara Land Rights Act 1981 (SA), Maralinga Tjarutja Land Rights Act 1984 (SA), Aboriginal Land Rights Act 1983 (NSW), Aboriginal Land Act 1991 (QLD), Torres Strait Islander Land Act 1991 (QLD), Aboriginal Lands Act 1995 (TAS), Traditional Owner Settlement Act 2010 (VIC). ACT has more localised agreements. See [www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc-report-126/3-context-for-reform/land-rights-and-native-title-in-the-states-and-territories/](http://www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc-report-126/3-context-for-reform/land-rights-and-native-title-in-the-states-and-territories/), retrieved 26/11/2019
- <sup>[5]</sup> 'Land rights and native title aren't the same — and the two systems could spark Indigenous conflict', ABC News 18/11/2018
- <sup>[6]</sup> <sup>[6a]</sup> 'The political ecology and political economy of the Indigenous land titling 'revolution' in Australia', Jon Altman, Māori Law Review, March 2014, [maorilawreview.co.nz/2014/03/the-political-ecology-and-political-economy-of-the-indigenous-land-revolution-in-australia/](http://maorilawreview.co.nz/2014/03/the-political-ecology-and-political-economy-of-the-indigenous-land-revolution-in-australia/), retrieved 25/11/2019
- <sup>[7]</sup> 'Connection to Country: Review of the Native Title Act 1993 (Cth)', ALRC Report 126, Australian Law Reform Commission, 'Outcomes to date', Table 2, 22/5/2015, [www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc-report-126/3-context-for-reform/outcomes-to-date/](http://www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc-report-126/3-context-for-reform/outcomes-to-date/), retrieved 28/11/2019

### Cite this page

Korff, J 2020, *Land rights and native title – what's the difference?*, <<https://www.creativespirits.info/aboriginalculture/land/land-rights-and-native-title-whats-the-difference>>, retrieved 1 November 2023