In Chapter 19 of the National Report, the Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) explored issues concerning land needs for Indigenous people. The RCIADIC noted that such needs arise in various circumstances. Aspects of the significance of land being emphasised by Aboriginal people vary throughout Australia. These range from securing land title to protect cultural life and ritual responsibilities to adequacy of housing and infrastructure for maintenance of family and community health.

The recommendations in Chapter 37 of the National Report address the issues raised in Chapter 19. The RCIADIC took care to note that there is no simplistic correlation, or even a demonstrated link, between land rights and deaths in custody. However, advances in land rights processes in the Northern Territory were seen as important in contrast to Western Australia which had "stunningly bad statistics with respect to arrest and detention rates and grossly excessive numbers of deaths in custody".¹

The RCIADIC recommended that all jurisdictions should allow secure title to land to be obtained by Indigenous communities. The processes by which land needs are met need to be flexible enough to accommodate differing needs and priorities of Indigenous people. They need to provide Indigenous people with control over protection of sacred sites without being strong-armed politically. The RCIADIC noted that non-Indigenous Australians gain direct and indirect benefits from Indigenous culture being preserved and protected. That the nation gains from valuing, preserving and respecting the ancient indigenous culture which depended on the land.

1. **Legislative intervention for Indigenous communities to obtain and protect land (Recommendations 334 - 337)**

**Recommendation 334:** That in all jurisdictions legislation should be introduced, where this has not already occurred, to provide a comprehensive means to address land needs of Aboriginal people. Such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal people who claim such land on the basis of cultural historical and/or traditional association.

**Recommendation 335:** That in recognising that improvement in the living standards of many Aboriginal communities (especially for those people living in inadequate housing and environmental circumstances on the fringes of towns and on other discrete areas of Aboriginal occupation of land) cannot be ensured without the

¹ Royal Commission into Aboriginal Deaths in Custody, National Report, 1991, Chapter 37, paragraph 37.16.
security of land title, governments provide, by legislation and/or administrative direction, an accelerated process for the granting of land title based on need.

**Recommendation 336:** That unalienated Crown land granted on the basis of cultural, historical and/or traditional association of Aboriginal people should be granted under inalienable freehold title and should carry with it the right of the Aboriginal owners to, inter alia:

(a) determine who may enter the land and the terms of such entry; and

(b) control the impact of development on the land in so far as such development may threaten the cultural and/or social values of the Aboriginal owners and their communities.

**Recommendation 337:** That governments recognise that where appropriate unalienated Crown land is unavailable to be claimed on grounds of cultural, historical or traditional association with the land or where, due to the processes of the history of colonisation, Aboriginal people are no longer able to, nor seek to, make claims to particular areas of unalienated Crown land on the basis of cultural, historical or traditional association there remains land needs of Aboriginal people which should be met by governments. These needs should be accommodated by a process which:

(a) Enables Aboriginal communities or groups to obtain secure title to unalienated Crown land or to purchase land for social, recreational and community purposes (including the obtaining of additional land in circumstances in which an Aboriginal community is on Aboriginal land but where the area of that land is established as being too small to accommodate the community);

(b) Enables Aboriginal communities or groups to obtain secure title to land so as to improve the environmental circumstances in which they live;

(c) Provides adequate funding in order that land may be purchased on the open market in pursuance of the needs identified in paragraphs (a) and (b); and

(d) Where pastoral land is held on lease from the Crown, permits Aboriginal communities traditionally or historically associated with the land to have priority when leases come up for renewal.

1.2 Legislative Processes for Land Claims

The RCIADIC noted in its National Report that, at that time, there were legislative processes to deal with land claims in the following jurisdictions:

- the Northern Territory, which provided an orderly process for addressing claims to land on grounds of cultural and traditional association;

- New South Wales, where the success rate of claim was significantly lower than in the Northern Territory;

- Victoria, where legislation provided for the transfer of title to Indigenous groups with an historical and present cultural association; and

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*National Report, footnote 1, Chapter 37, paragraph 37.3.*
South Australia, where legislation recognised traditional ownership and title transfer over significant areas of land without a formal hearing process being required (though groups not covered by the legislation did not have a process for making claims).

In Queensland and Tasmania, the State governments had already committed themselves to allowing a process for making claims but had not yet done so.\(^3\) Meanwhile, there had been little progress in Western Australia, despite an earlier inquiry recognising that many Indigenous people in that State could make a land claim on cultural and traditional grounds and wished to do so.\(^4\)

Steps have now been taken by the Commonwealth and all State and Territory governments, to a greater or lesser extent, to address Indigenous land needs in legislation. Queensland passed its legislation within months after the National Report was published followed later by Tasmania and, somewhat begrudgingly Western Australia.\(^5\) Nevertheless, the process is continually evolving. Notably, Queensland’s legislation to meet the object of Recommendation 334 has effectively expired as all claims had to be made before 22 December 2006.\(^6\)

However, the most significant development in Indigenous land rights since the RCIADIC was the High Court’s decision in \textit{Mabo}, handed down shortly after the National Report was published.\(^7\) In a watershed decision, the Court in \textit{Mabo} found that the common law did recognise a form of native title that survived the Crown’s acquisition of sovereignty and radical title over Australia.

It is unclear whether the steps taken by governments to address land needs have been in response to the RCIADIC recommendations or to other factors such as the decision in \textit{Mabo}. Whether particular RCIADIC recommendations have been implemented, and to what extent and how effectively they have been implemented, remains a matter of debate.

The difficulty in assessing the implementation of RCIADIC recommendations addressing Indigenous land needs is exacerbated by factors including lack of a requirement for specific action to be taken or objective criteria by which implementation can be assessed. Rather the recommendations are expressed as broad goals. Prior to this Report

\(^3\) National Report, footnote 1, Chapter 37, paragraph 37.4.

\(^4\) National Report footnote 1, Chapter 37, paragraph 37.5.

\(^5\) \textit{Aboriginal Lands Act 1991 (Qld)} and \textit{Land Act 1994 (Qld)}; \textit{Aboriginal Lands Act 1995 (Tas)}; \textit{Land Administration Act 1997 (WA)} and \textit{Aboriginal Affairs Planning Authority Act 1972 (WA)}.

\(^6\) \textit{Aboriginal Land Act 1991 (Qld)}, section 60.

\(^7\) \textit{Mabo & Ors v Queensland (No 2) (1992)} 175 CLR 1.
there do not appear to be any reports addressing the implementation of these particular recommendations.8

1.3 Native title and land rights

There are two main mechanisms for recognising the Indigenous land needs under Australian law; native title and land rights. Land rights legislation provides for statutory rights over land, formulated by governments. It is fundamentally different to native title which recognises a pre-existing right deriving from Indigenous peoples’ law and customs. Native title is not a grant or right from the legislature.

1.3.1 The origins of native title recognition - Mabo & the Native Title Act 1993

In 1992, the High Court delivered its historic decision in Mabo9, providing the first judicial recognition of native title under Australian common law. The recognition of native title overturned the legal assumption that Australia was terra nullius, or empty land, at the time of the arrival of the first Europeans. However, the recognition of native title in Mabo was limited. Title could be lost through Indigenous groups ceasing to exist or losing the customary law and traditions on which their title was based. Title could also be extinguished through the surrendering of native title to the Crown (possibly in exchange for other benefits) or through valid legislative changes creating inconsistency with other interests, such as the grant of freehold or certain leasehold estates.

The Commonwealth Government’s response to Mabo was to introduce the Native Title Act 1993 (Cth) commencing on 1 January 1994. It set out a national scheme to provide for the recognition and protection of native title by establishing the National Native Title Tribunal (NNTT). It established mechanisms for:

- Determination of native title claims by the NNTT and the Federal Court;
- providing compensation for the extinguishment of native title;
- to consider previous Crown grants of interests in land against the backdrop of native title and the Racial Discrimination Act 1971 (Cth);
- confirming Crown ownership of natural resources, water rights and access to public places;
- processing future dealings with the Commonwealth to put native titleholders in a similar position as freehold and other land titleholders. This included introducing a right to negotiate for native title holders and claimants in relation to the granting of mining interests and other compulsory acquisitions of land for the purpose of providing grants to private parties; and


9 Mabo & Ors v Queensland (No 2) (1992) 175 CLR 1.
• providing for agreements to be made between native title holders and government for the surrender or extinguishment of rights and interests or to authorise future acts.

Following the Commonwealth’s enactment of the *Native Title Act*, each State and Territory enacted their own version of the legislation creating a coordinated national system.¹⁰

In broad terms, the resulting native title system recognises communal, group or individual rights and interests which Indigenous people have in land or water. They must have maintained a continuing connection with the land or water in accordance with their traditions and custom. Native title can be extinguished by valid grants of land to non-Indigenous people or it can be lost where the Indigenous connection to the area is not maintained.

Native title rights may include the right to exclusively possess and occupy an area. However, native title rights resembling freehold ownership are only available over some parcels of vacant Crown land, certain Aboriginal reserves and some pastoral leases held by native title holders.¹¹ Native title rights over other areas are most likely to be non-exclusive rights.¹²

### 1.3.2 Native title recognition: post-Mabo

Many Indigenous people welcomed *Mabo* for its symbolic importance as well as practical significance. It provided Indigenous people with an opportunity to gain formal recognition under the Australian legal system of their rights and interests in certain land and waters. It also gave some Indigenous people the opportunity to make claims in respect to their traditional lands, and to participate in and benefit from economic development through the negotiation of cooperative agreements with miners, governments and others interested in development on their land.¹³ However, subsequent attempts to deal with perceived difficulties caused by *Mabo* have been criticised by Indigenous people as an attempt to diminish Indigenous rights by extinguishing native title on pastoral leases.¹⁴

For example, in 1996, in the *Wik* case,¹⁵ the High Court decided that pastoral leases in Queensland do not necessarily extinguish native title and that, in some circumstances, native title rights could continue at the same time that...

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¹⁰ *Native Title (South Australia) Act 1994* (SA); *Native Title Act 1994* (ACT); *Native Title Act 1993* (Vic); *Native Title (New South Wales) Act 1994* (NSW); *Native Title (Queensland) Act 1994* (Qld); *Native Title (Tasmania) Act 1994* (Tas); *Titles Validation Act 1997* (WA); *Validation of Titles and Actions 1994* (NT).


¹² Ibid.


land was subject to a pastoral lease. It decided that, in the absence of a clear and plain legislative intention to extinguish native title and where native title can co-exist with other rights and interests, native title continues to exist. If native title is inconsistent with other validly created rights and interests, then it must give way.

The Commonwealth Government enacted the *Native Title Amendment Act 1998 (Cth)* in response to concerns that the *Wik* decision could have significant impact to pastoral leases covering over 40 per cent of land in Australia as well as community fears that the decision could lead to claims over suburban backyards. These amendments became known as the "10 Point Plan". The amendments made significant changes to the *Native Title Act* purportedly to provide ‘certainty’ in light of the *Wik* decision.

The amendments included:

- the deemed extinguishment and subordination of native title over various interests in land and validated grants made before the *Wik* decision was handed down;

- the abolition or reduction of the right of native title claimants and holders to negotiate whilst enabling State and Territory governments to set up their own alternate provisions relating to the right to negotiate; and

- expansion of the provisions for Indigenous Land Use Agreements between native title holders and other interested parties as an expedited process to allow for the creation of binding agreements even where there had been no final determination of the existence of the relevant title.

### 1.3.4 Native title recognition today and current reviews

Some Indigenous people believe that steps taken to recognise native title represent the bare minimum. For instance, according to the Australian Institute of Aboriginal and Torres Strait Islanders\(^\text{16}\), the areas recognised as available for claim are often very limited and a grant of title is often preconditioned on the leasing back of the land to the government for use as national park or for other public purposes.\(^\text{17}\) In NSW, "credible evidence" is required before the government will enter into any meaningful negotiations

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\(^{16}\) AIATSIS is a Commonwealth statutory authority within the portfolio of the Department of Education and Training. It describes itself as a "world-renowned research, collections and publishing organisation… [which promotes] knowledge and understanding of Aboriginal and Torres Strait Island cultures, traditions, languages and stories, past and present" [http://www.aiatsis.gov.au/corporate/about.html].

but there are no publicly available policies or guidelines as to what evidence may be acceptable.\textsuperscript{18}

By its nature, need is not a factor in determining the existence of native title. But, aside from the development of Indigenous Land Use Agreements, accelerated processes based on need are not specifically addressed and the long timeframes for determinations of land rights and native title arrangements has not been noted as a specific feature of these developments.

Statistically, according to the NNTT, as at 7 April 2015:

- there have been 310 determinations of native title by a court or other recognised body of which 250 have found native title to exist;\textsuperscript{19}
- there are 378 current native title applications (which may include applications subject to determinations of native title in which orders have been made but not yet complied with);\textsuperscript{20} and
- there were 982 Indigenous Land Use Agreements registered with the NNTT.\textsuperscript{21}

The \textit{Social Justice and Native Title Report 2014} of the Aboriginal and Torres Strait Islander Social Justice Commissioner, reported key trends in native title which have been identified by the Federal Court over the past 5 years, including:

- a decline in the number of new applications filed each financial year from a peak of 322 in 1995-1996 to 40 new claims in 2013-2014; and
- a significant reduction in the median time for resolution of applications determined in 2013-2014 compared to previous years, declining from an average of almost 13 years in June 2013 to an average of 2.5 years as at 30 June 2014.\textsuperscript{22}


\textsuperscript{19} National Native Title Tribunal (NNTT), \textit{Search Native Title Applications, Registration Decisions and Determinations}, search conducted 7 April 2015 <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>.


There have been amendments to the Native Title Act in recent years, some of which were intended to make the process faster and more flexible and to produce better outcomes for Indigenous people.\(^{23}\)

In the Social Justice and Native Title Report 2014, the Aboriginal and Torres Strait Islander Social Justice Commissioner observed that, since the Wik decision, the numerous amendments to the Act have "diminished the 'beneficial' intent of the Native Title Act, and the extent to which the native title rights have been realised". In the Commissioner's view, introducing the Native Title Amendment Bill 2012 (Cth) would go some way to supporting Indigenous people in realising their right to native title, and would also be consistent with international human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (2007).\(^{24}\)

However, there are no current plans to reintroduce that Bill, pending the outcome of the myriad reviews currently being undertaken (see below).

In December 2012, the Australian Government commissioned Deloitte Access Economics to review the role and functions of Native Title Representative Bodies (‘NTRBs’), Native Title Service Providers (‘NTSPs’), Prescribed Bodies Corporate (‘PBCs’) and Registered Native Title Bodies Corporation (‘RNTBCs’) to ensure that they continue to meet the evolving needs of the system, and particularly the needs of native title holders after claims have been resolved.\(^{25}\) The final report for that review was released in May 2014.

The review found that nearly all NTRBs and NTSPs continue to be heavily involved in supporting native title holders and that work is not expected to slow down in the next five to ten years. Areas of growth include the establishment of increasing numbers of RNTBCs, as holders seek to use their native title for economic and community development purposes. Importantly, while the Native Title Act is prescriptive on the requirements that need to be met and fulfilled to make a successful claim, "the Act gives only limited consideration to how such property rights and interests can deliver enjoyment to the native title holders post-determination."\(^{26}\)

The work to review and, where appropriate, make amendments to the native title system is far from finished. A number of reviews into the
operation of the native title system have also recently been initiated. These include the Australian Law Reform Commission’s review into the Native Title Act, which focuses on connection requirements and the impact of authorisation and joinder provisions of the Act (which can affect timely and effective resolution of claims). Importantly, the review recognises that the current law for determining native title is very complex, and the requirements which need to be established can result in very long time frames for determinations. A discussion paper was released on 23 October 2014, and submissions closed on 19 January 2015. The ALRC is due to report on the inquiry in April 2015.

In addition, on 10 October 2014, the Council of Australian Governments (‘COAG’) announced that it would conduct an urgent investigation into Indigenous land administration and use. “To enable traditional owners to readily attract private sector investment and finance to develop their own land with new industries and businesses to provide jobs and economic advancement for Indigenous people.” An Expert Indigenous Working Group was appointed in February 2015 to help identify issues and develop options for COAG’s consideration.

1.4 Closing the Gap

In recognition of the significant difference in health and life expectancies between Indigenous people and other parts of Australian society, in 2008, all Australian governments committed to a National Integrated Strategy for Closing the Gap intended to overcome Indigenous disadvantage in various areas, including housing. The strategy is intended to be updated as initiatives take effect and changes occur. Closing the Gap reforms are to be achieved by working in partnership with Indigenous people through various National Partnerships.

In February 2015 the Australian Government’s Department of the Prime Minister and Cabinet released a further report on the progress of the Closing the Gap targets. Tis was the seventh report since delivery of the recommendations for reform in 2008. In his introduction, the Prime Minister, the Hon Tony Abbott MP, stated that
“[a]lthough there has been some improvement in education and health outcomes for Indigenous Australians, in many areas progress has been far too slow.”

In relation to Indigenous land needs, the report acknowledges that "[g]reater flexibility in how Aboriginal and Torres Strait Islander peoples choose to use the land they own and live on, can help to create stronger and more independent futures for people living in communities on Indigenous land.” Indigenous Business Australia (IBA) is increasing its focus on "helping Indigenous landowners to build wealth and maximise economic outcomes from their land and native title rights", including considering new investment options and developing Indigenous investment principles.

1.5 Land tenure reform and the National Partnership Agreement on Remote Indigenous Housing

A National Partnership Agreement on Remote Indigenous Housing has been entered into as part of the Closing the Gap reforms, under which the Australian Government is to provide $5.5 billion in funding to the States and Northern Territory over 10 years to 2018 to deliver new houses and rebuild or refurbish existing houses in remote Indigenous communities around Australia. The Northern Territory program itself has been allocated $1.7 billion, as the jurisdiction with the largest remote Indigenous population.

In 2007, the Commonwealth Government passed the Northern Territory National Emergency Response Act 2007 (Cth) (‘NTNERA’). The NTNERA was the statutory embodiment of the Commonwealth Government’s policy response to the Little Children Are Sacred report into child sexual abuse in the Northern Territory, known as the Northern Territory Intervention. The NTNERA contained a number of controversial measures, including in the area of land rights, the granting, by force of the Act, compulsory leases for 5 year terms giving the Commonwealth "exclusive possession" over major Aboriginal communities in the Northern Territory.

Introduction of the Stronger Futures in the Northern Territory Act 2012 (Cth) included further measures relating to tackling alcohol abuse, land reform and food security. In relation to land reform, the legislation purports to be aimed at facilitating the granting of rights and interests, and promoting economic development in town camps and community living areas. The legislation will sunset after ten years (i.e. 2022).

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The Commonwealth Government has also reformed land tenure for communities on Indigenous land by introducing a policy of negotiated long term leases over Indigenous held land. The Government claims that this will enable the Government to retain control over assets built on Aboriginal land so as to ensure that those assets continue to be used for their intended public benefit, and are maintained over time, whilst allowing underlying ownership of the land to remain with traditional owners. The Government believes that this will provide better arrangements for ongoing maintenance and service and that it will give tenants the certainty and protection of an enforceable tenancy management system, including fairer rents, waiting lists and allocations. Whether this proves to be the case remains to be seen, however, critics have already expressed dismay at the failure to move Indigenous people to home ownership by swamping them with social housing.

This reform is managed through the Office of Township Leasing under the Executive Director Township Leasing (‘EDTL’) established through the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (‘ALRA’). The EDTL negotiates, on a voluntary basis, leases under section 19A of the ALRA with Indigenous land owners for terms of between 40 and 99 years. Ownership of the land meanwhile remains with the traditional owners and the EDTL then manages the lease in accordance with the relevant statutory responsibilities and the terms of the lease.

Every occupier of land or buildings in the township lease area is then expected to enter into a township sublease with the EDTL to cover their use of the particular land or building. This is intended to provide individuals and organisations with security of tender in order to operate and obtain financing for businesses and, in turn, make it easier for community members to purchase their own homes.

Rental payments are part of the negotiations of township leasing arrangements. It is understood that the initial township leases included an advance rental payment to cover the first 15 years of the lease after which the rent will consist of rent paid under the subleases, less administration costs.

There are currently three township leases covering six communities: Wurrumiyanga (Nguiu) on Bathurst Island, Milikapiti and Wurankuwu (Ranku) in the Tiwi Islands, Angurugu, Umbakumba and Milyakburra on Groote Eylandt and Bickerton Island. The Executive Director of Township Leasing has also entered into sublease agreements over seventeen Alice Springs Living Areas (also known as Town Camps) and two Housing Precinct leases in Lajamanu and Hermannsburg (Ntaria).

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40 In an interview on the ABC’s Lateline program on 15 April 2013, Indigenous leader Noel Pearson expressed dismay that attempts to move Indigenous people from social housing into private home ownership had been frustrated by the massive social housing investment that has been made by the Federal Government across Australia since 2008-2009 claiming that Indigenous communities were swamped by the whole social housing agenda and the need to move from social housing to home ownership was yet to be heeded. A transcript of the interview is available online at <http://www.abc.net.au/lateline/content/2013/s3737632.htm>.

May 2015
It may be considered too early to determine whether the Closing the Gap reforms, including the land tenure reforms, has led to any improvements.

1.6 Indigenous Land Corporation

In 1995, the Indigenous Land Corporation (‘ILC’) was established as an Indigenous-controlled statutory authority to assist Indigenous Australians to acquire and manage land.\(^{43}\) As at June 2014, since its establishment on 1 June 1995, the ILC had acquired 250 properties across Australia with a total land area of nearly 6 million hectares.\(^{44}\) The ILC assists Indigenous people with land acquisition and land management, aimed at achieving economic, environmental, social and cultural benefits for Indigenous people. Priority is given to projects that provide Indigenous people with sustainable jobs and training that leads to employment on Indigenous-held land.

The Aboriginal and Torres Strait Islander Land Account - originally funded by Commonwealth Government appropriations and now essentially self-funding - is intended to provide secure and ongoing funds to the ILC to assist in the acquisition and management of an Indigenous land base. During 2013-2014, the ILC acquired four properties at a total value of $5.6 million and $56.3 million was spent on land management projects. The ILC also granted four properties to Indigenous organisations that had demonstrated a capacity to own and manage land to achieve sustainable benefits for Indigenous people.\(^{45}\)

Significant policy work aimed at amending the *Aboriginal and Torres Strait Islander Act 2005* to strengthen and protect the Land Account has also been a recent focus in Parliament. A draft bill was introduced in June 2014, and a Senate Committee was convened to inquire into that bill (*Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014*). A report on the Senate Committee findings was tabled on 25 March 2015\(^ {46}\). The Committee recommended that the Senate not pass the bill, finding that a coherent case for legislative change had not been demonstrated, nor was the bill's current form sufficiently clear to warrant support.\(^ {47}\)

2. Western Australia: Transfer of reserve or mission land

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43 The ILC was established under the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* (Cth). The current enabling legislation is the *Aboriginal and Torres Strait Islander Act 2005* (Cth).


46 The Senate, Community Affairs Legislation Committee, *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014* (25 March 2015)

47 The Senate, Community Affairs Legislation Committee, *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014* (25 March 2015), 18 and 19

27. ADDRESSING LAND NEEDS (RECOMMENDATIONS 334-338)
**Recommendation 338:** That as an interim step all land held under leasehold, being former Aboriginal reserve or mission land and being now held for or on behalf of Aboriginal people, be forthwith transferred under inalienable freehold title to the present leaseholder(s) pending further consideration by Aboriginal people as to the appropriate Aboriginal body which should thereafter hold the title to such land.

In the National Report, the RCIADIC noted that Western Australia was an anomalous situation compared to the other States and Territories. WA did not provide a process to allow for claims to land, despite having made detailed investigations demonstrating many Indigenous communities that were in a position, and had the desire, to do so. In this context, the RCIADIC stated that there was "no reason at all why the former Aboriginal reserve land, which is now held under leasehold on behalf of Aboriginal people, could not be transferred under freehold title in exactly the same way that such reserves were automatically transferred by the Aboriginal Land Rights Act in the Northern Territory in 1976." 48

The RCIADIC also noted there were conflicting opinions amongst Indigenous people as to whether land granted under land rights processes should be able to be sold or mortgaged but concluded that most Indigenous people would "take the view that land which has been claimed on traditional grounds and which has a continuing importance for ceremonial life should be incapable of being sold, that it should be inalienable."

Although the Recommendation itself was not expressed to apply only to Western Australia, in most jurisdictions, this Recommendation was considered not to be applicable. 49

In Western Australia itself, far from being the "interim step" recommended by the RCIADIC, the Recommendation has been the subject of ongoing implementation by the Aboriginal Lands Trust ("ALT") under the Aboriginal Affairs Planning Authority Act 1972 (WA) and a Land Transfer Program that began in 1999. 50 This was described as a "slow and painful process" due to reasons including:

- Difficulties identifying to whom the land should be transferred;
- Lack of sustainable Aboriginal organisations with sufficient resources and governance structures to meet the ongoing financial commitments

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48 National Report, Chapter 37, paragraph 37.5.
49 See, for instance, the 2005 Victorian Implementation Review of Recommendations <http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/reviewing+and+responding+to+the+royal+commission+into+aboriginal+deaths+in+custody+leader/victorian+government+response+to+the+royal+commission+into+aboriginal+deaths+in+custody>. The review noted at 315 that very few former Aboriginal reserves or mission lands remained on Crown land and none of them were held under leasehold for or on behalf of Aboriginal people.
and administrative demands associated with land ownership and management; and

- lack of resources allocated within government to meet numerous liabilities associated with the relevant land.\(^{51}\)

The ALT has transferred Management Orders for reserves classed as Crown Reserves (or Aboriginal Reserves) to Indigenous organisations.\(^{52}\) The transferee organisation then assumes authority for care, control and management of the land for the use and benefit of Indigenous people and may have the power to lease the land but does not have title to it.

As reported in the Western Australian Government Department of Aboriginal Affairs 2014 Annual Report, the ALT estate comprises approximately 24 million hectares, or 9.65% of the State’s land. During the year, the ALT met five times and passed 56 resolutions, which included approving two lease extensions over portions of the estate, endorsing an interim development approval process for ALT land and supporting establishment of a Government taskforce to coordinate divestment of the ALT estate.\(^{53}\)

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\(^{52}\) Section 46, Land Administration Act 1997 (WA).