APPENDIX L: COMPONENTS OF THE INDIGENOUS ESTATE

Table L.1 Components of the Indigenous Estate

Component	Description
Statutory Land Rights grants/transfers	Acts of 'grace or favour' by the State/Territory governments whereby land is granted or transferred to an Aboriginal or Torres Strait Islander entity or person. In some jurisdictions there is an application process (NT, NSW). In other jurisdictions there are 'one-off' type grants or transfers (Tas, Vic). WA has never had a statutory land rights scheme. In most jurisdictions such land is 'inalienable' i.e. the land cannot be sold on the open market.
Land Trust	A trust arrangement whereby the trust holds the land which may only be used 'for the use and benefit of Aboriginal inhabitants.' These arrangements reflect the 'protection' approach to Indigenous affairs that was used extensively during the latter part of the 19th Century and the early part of 20th Century (WA, SA, Qld).
Native title	The recognition by the common law of a pre-existing right under Aboriginal or Torres Strait Islander law and custom. Native title is not granted by governments. The Federal Court of Australia makes a determination as to whether native title exits wholly or partly for an area and the final determination will identify whether it is of exclusive or non-exclusive possession.
Indigenous land use agreements (ILUAs)	The *Native Title Act 1993* (Cth) enables native title claimants or holders to enter into formal agreements with other parties to validate activities on land where native title exists or may exist. For an ILUA to be registered under the *Native Title Act 1993* (Cth), the ILUA must deal with native title matters. ILUAs can be made at any time.
Cultural heritage	All States/Territories and the Commonwealth have enacted legislation to provide some level of protection for objects, sites and places of cultural value or significance to Aboriginal and Torres Strait Islander peoples. There is no one definition of what comprises Aboriginal or Torres Strait Islander cultural heritage across Australia. Some definitions are very narrow, whereas other definitions are quite broad. These cultural heritage schemes are seen as another form of cultural appropriation because the schemes are based on the assumption that governments preserve heritage in the wider interests of the public.
Indigenous Protected Areas (IPAs)	An IPA is an area of land and/or sea over which the Indigenous traditional owners or custodians have entered into a voluntary agreement with the Australia Government for the purposes of promoting biodiversity and cultural resource conservation. A management plan must be prepared that identifies an International Union for the Conservation of Nature (IUCN) management category to promote a balance between conservation and other sustainable land uses.

Component	Description
Jointly managed National or Marine Parks or Co-managed areas	Since the native title era, the Commonwealth and some State/Territory governments have become more willing to enter into some kind of joint or co-management arrangement with Aboriginal and Torres Strait Islander peoples of existing government-owned land, but also over other Indigenous owned land. These arrangements vary significantly across Australia and may also include arrangements over declared marine parks.

Source: Wensing, 2019, prepared for PLAN6000 UNSW©. For a more detailed analysis of the Indigenous Estate see Wensing, 2016.