Where has native title been extinguished (removed)?

The Australian legal system does not recognise native title rights and interests in some areas where things have been done to extinguish native title. In those areas native title may be partly or wholly extinguished.

Initially, when the Native Title Act 1993 (Cth) was first enacted following the High Court’s decision in Mabo (No. 2), it was not clear exactly what types of tenures or activities extinguished native title rights and interests. When the Native Title Act 1993 (Cth) was amended in 1998, the amendments included a list of the different types of land titles that Governments believe extinguish native title. The list includes some past acts. It also includes previous exclusive possession acts which are acts done on or before 23 December 1996 (the date of the High Court’s Wik decision). Such acts completely extinguish all native title rights and interests for an area.

The list of previous exclusive possession acts includes:
- a Scheduled interest listed in Schedule 1 of the Native Title Act 1993 (Cth) and enacted in complementary State/Territory legislation;
- a freehold estate or privately owned land or waters (including family homes and privately owned freehold farms);
- a residential, commercial, community purpose leases;
- an exclusive agricultural or pastoral lease;
- any lease (other than a mining lease) that confers exclusive possession over particular land or waters;
- certain vestings or reservations where the vesting or reservation passes the legal estate of the land into the care, control and management of State/Territory agencies or local Councils; and
- the valid construction or establishment of any public work that was commenced on or before 23 December 1996.

These areas of land cannot be included in an application for a determination of native title. They are generally excluded from the area description in the application.