What are previous exclusive possession acts?

A ‘previous exclusive possession act’ is an act or activity by governments done by governments before 23 December 1996 that gives exclusive possession over land or waters to another person or organisation. Such acts completely extinguish native title.

A ‘previous exclusive possession act’ 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;
- a commercial lease;
- an exclusive agricultural or pastoral lease;
- a residential lease;
- a community purposes lease;
- any lease (other than a mining lease) that confers exclusive possession over particular land or waters;
- the valid construction or establishment of any public work that was commenced on or before 23 December 1996.

The Native Title Act 1993 (Cth) makes it clear that the following acts are NOT previous exclusive possession acts:
- a grant or vesting of land is to, in or for (or held on trust expressly for) the benefit of Aboriginal or Torres Strait Islander people;
- the grant or vesting involves the establishment of a State, Territory or National Park for the purpose of preserving the natural environment of the area;
- a grant from one agency of the Crown to another agency of the Crown unless the grant or vesting extinguishes native title in relation to the land or waters, or if the grant or vesting does not extinguish native title in relation to the land or waters, unless and until the land or waters are used to any extent in a way that extinguishes native title (whether before or after 23 December 1996); and
- where legislation expressly provides that an act does not extinguish native title rights and interests.