



about Australia

Indigenous land rights and native title

- Indigenous Australians—the Aboriginal and Torres Strait Islander peoples—have a unique affinity with the land. ‘Country’ is important to Indigenous culture, spirituality, history and, particularly in non-urban areas, economic empowerment.

Land rights

Through a number of programs and measures, the Australian Government provides opportunities to Indigenous Australians to access and own the land with which they have an ongoing traditional association, or land that can assist them with social, cultural and economic development.

From the early 1970s, the government commenced purchasing privately owned land (especially in rural Australia) for the benefit of Indigenous communities. The Australian and state governments also began to legislate to return certain Crown (government-owned) land to Indigenous communities and to allow claims to other Crown land. The *Aboriginal Land Rights (Northern Territory) Act 1976* is the best known example of such legislation. It transferred almost 50 per cent of land in the Northern Territory (around 600 000 km²) to collective Indigenous ownership.

The government also supports the operations of bodies that help Indigenous communities in land ownership. The Indigenous Land Corporation assists Indigenous Australians to acquire land and manage Indigenous-held land sustainably and in a manner that provides cultural, social, economic and environmental benefits for themselves and

future generations. The corporation is funded by an annual payment from the investment returns of the Australian Government’s Aboriginal and Torres Strait Islander Land Account.

Native title

The 1992 decision by the High Court of Australia in the case of *Mabo v Queensland (No. 2)* was a watershed in Australian law. In that case, concerning the legal rights of the Meriam people to the lands of the Murray Islands in the Torres Strait, the High Court held that the common law of Australia recognises a form of native title, to be determined in accordance with Indigenous traditional law and custom. In doing so, the court rejected the notion that Australia was *terra nullius*—that is, land belonging to no one—at the time of British settlement.

In *Mabo* and a number of more recent decisions, the High Court has characterised native title as being able to be possessed by a community or individual depending on the content of the traditional laws and customs; inalienable other than by surrender to the Crown; and ranging from access and usage rights to rights of exclusive possession. Native title rights and interests are based on laws and

customs that pre-date the British acquisition of sovereignty. That is, native title rights and interests are distinct from the rights granted by government expressly, such as statutory land rights of the kind found in the *Aboriginal Land Rights (Northern Territory) Act 1976*. Native title rights and interests may exist over land and waters to the extent that they are consistent with other rights established over the land by law or executive action.

The *Native Title Act 1993* establishes a framework for the protection and recognition of native title. The Australian legal system recognises native title where:

- the rights and interests are possessed under traditional laws and customs that continue to be acknowledged and observed by the relevant Indigenous Australians
- by virtue of those laws and customs, the relevant Indigenous Australians have a connection with the land or waters
- the native title rights and interests are recognised by the common law of Australia.

The Native Title Act sets up processes to determine where native title exists, how future activity impacting upon native title may be undertaken, and to provide compensation where native title is impaired or extinguished. The Act gives Indigenous Australians who hold native title rights and interests—or who have made a native title claim—the right to be consulted and, in some cases, to participate in decisions about activities proposed to be undertaken on the land. Indigenous Australians have been able to negotiate benefits for their communities, including in relation to employment opportunities and heritage protection.

The Act also establishes a framework for the recognition and operation of representative bodies that provide services to native

title claimants and native title holders. The Australian Government provides significant funding to resolve native title issues in accordance with the Act, including to native title representative bodies, the National Native Title Tribunal and the Federal Court.

Native title issues between Indigenous Australians and other groups with an interest in native title—such as the Australian Government, state and territory governments, miners and pastoralists—are increasingly being addressed by negotiation and agreement. As familiarity with the provisions and processes of the Native Title Act becomes widespread, the use of voluntary Indigenous Land Use Agreements and the consensual determination of native title applications are becoming more common.

Further information

Attorney-General's Department
www.ag.gov.au

National Native Title Tribunal
www.nntt.gov.au

Indigenous Land Corporation
www.ilc.gov.au

Department of Families, Housing, Community Services and Indigenous Affairs
www.fahcsia.gov.au/indigenous

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