



Koori Mail
25/02/2009
 Page: 22
 General News
 Region: National
 Circulation: 9164
 Type: Magazines Lifestyle
 Size: 321.50 sq.cms
 Fortnightly

Room for improvement

In the 15 years since the Native Title Act, many successful native title outcomes have been achieved. But the system could still be improved.

The *Commonwealth Native Title Act 1993* began operating on 1 January 1994, following the High Court's historic Mabo decision of 1992, which recognised native title in Australia for the first time.

Under the Act, 117 decisions about determinations of native title have been made, including 71 consent determinations. Altogether 82 determinations have been made that native title exists, covering about 11.6 per cent of Australia's land mass (889,477 sq km) and an additional 27,380 sq km of sea (below the high water mark).

All determinations recognising native title in 2008 were by agreement.

The Act provides a platform for broader agreement-making options, such as Indigenous land use agreements (ILUAs), so that parties are not required to go down the long and sometimes divisive litigation path towards a possible native title determination.

To date, 364 ILUAs have been made and registered. They cover about 14.3 per cent of Australia's land mass (1,101,467 sq km) and an additional 2555 sq km of sea (below the high water mark). Hundreds of other agreements have also been made through the native title processes.

Some groups will be able to benefit directly from the native title system while others may not.

When the Mabo decision was made and the *Native Title Act 1993* was developed, it was made clear that not all Aboriginal groups would be able to achieve recognition of native title. This is stated in the preamble to the Act.

Native title has been extinguished over much of southern and eastern Australia. This is why the Indigenous Land Corporation was established – to purchase land for groups who would not be able to prove native title.

Although there have been many good outcomes, there is always room for improvement.

Over the 15 years, successive governments have amended the Act to improve the process and expand the options for settlement. Leading court decisions have clarified the law so that parties are working with clearer parameters than in the early days.

The current Australian Government has released a discussion paper on proposed native title amendments, following its announcement that it would be making changes to the role of the Federal Court in relation to native title applications.

The Federal Court has managed the progress of native title claims from lodgement to finalisation since the Act was amended in 1998.

Under the proposed changes, the Federal Court will have additional powers in relation to the mediation of native title applications, the discretion to decide if and when to refer matters to mediation and whether the Tribunal or the Federal Court will conduct mediation.

Parties currently have a broad range of options for settling native title claims under the Act, including ILUAs and agreements about related matters. It is important that this flexible approach remains so that all parties can negotiate outcomes that meet their local circumstances.

There are 473 native title claimant applications currently in the system and it is essential to find ways to facilitate faster determinations of native title.

Parties need to explore creative ways of settling claims. These may not necessarily include a determination that native title exists, but may include ILUAs, grants of title to land and joint management of conservation areas.

These options, which can be negotiated under the Act, have already been embraced by many Indigenous groups and other groups around Australia.

The Federal Government is encouraging more negotiated settlements of native title and the Tribunal welcomes this.

