

Burgeoning Indigenous Land Ownership: Diverse Values and Strategic Potentialities

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Introduction

There have been two major tranches of Indigenous land rights reform in Australia since colonisation. The first, during the 1970s to 1990s, was based on broadly compensatory land rights regimes passed by Commonwealth and State governments. By 1992 about eight per cent of the Australian continent was held under some form of land rights regime; almost all this land was located in remote Northern Territory and South Australia.¹ Other land rights regimes, with more limited geographic coverage, have been legislated in every Australian State or Territory except for Western Australia and the Australian Capital Territory. In the aftermath of *Mabo v Queensland (No 2)*² (*Mabo*) in 1992 and the passage of the *Native Title Act 1993 (Cth) (NTA)*, a second tranche of Indigenous land repossession has unfolded. Both land rights and native title are ongoing processes; for example, there are currently over 300 registered native title claims yet to be considered for determination and in New South Wales around 26,000 land claims remain unresolved.³ A diverse set of land tenure forms has emerged in the past 40 years in what we define as a land titling ‘revolution’, with statutory land rights or exclusive and non-exclusive forms of native title recognised over more than 30 per cent of the Australian continent. Yet the response to this land restoration has been muted, in part because of inequity between Indigenous groups depending on level of ‘invadedness’; in part because the leverage provided by these various regimes to negotiate beneficial commercial outcomes has been limited in many situations; and in part because limited beneficial outcomes, as measured by official statistics, have been evident.

It is perhaps not surprising that there is little national understanding of the Indigenous component of Australian land tenure, because those who have succeeded in land claims have not sought to trumpet their good fortune, knowing that many

1 Jon Altman, ‘Economic Implications of Native Title: Dead End or Way Forward?’ in Will Sanders (ed), *Mabo and Native Title: Origins and Institutional Implications* (Research Monograph No 7, Centre for Aboriginal Economic Policy Research, Australian National University, 1994), 61.

2 *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

3 The figure was reported as 26,302 as at 8 August 2012 in, Kate Waters and Adam Black, ‘Facilitation to Enable Not Frustration to Disable’ (Report produced for Aboriginal Land Rights Review 2012 Working Group, 11 October 2012), 21.

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