

6. What is Native Title?

Information about the Taungurung *Traditional Owner Settlement Act 2010* agreement

What is native title?

Native title is the term used to describe the rights and interests that Aboriginal and Torres Strait Islanders in Australia continue to hold in relation to their lands and waters. These rights and interests arise from their traditional laws and customs and are recognised by the common law. The High Court's decision in *Mabo v Queensland (No. 2)* overturned the concept of 'terra nullius' (that no one owned the lands before European settlement). Native title is also recognised and protected under the *Commonwealth Native Title Act 1993*.

Native title rights derive from the laws and customs observed by First Nations people when Australia was colonised by Europeans. Those laws and customs must have been acknowledged and observed in a 'substantially uninterrupted' way from the time of settlement until now. Native title:

- is not granted by governments – it is recognised through a determination made by the Federal Court.
- will vary for each group because it comes from traditional laws and customs of the group
- exists alongside and is subject to the rights of other people in the same area
- can be extinguished because of things the government has done, or allowed others to do, over an area that are inconsistent with native title.

What was the Mabo decision?

Eddie Koiki Mabo took his claim to the High Court of Australia and was the first to have native title rights recognised, on behalf of the Meriam people of the Torres Strait. This landmark decision paved the way for the recognition and protection of native title across Australia and led to the passing of the *Native Title Act 1993*.

What is the *Native Title Act*?

The *Native Title Act 1993* is a Commonwealth law which provides a process by which Aboriginal and Torres Strait Islanders can lodge applications seeking a determination of native title, or compensation for acts that affect native title.

The Native Title Act also provides for the making of Indigenous Land Use Agreements (ILUA). These are agreements about the use and management of land and waters. They are made between a native title group (people who hold, or may hold, native title in the area), and other people, organisations or governments. Under these agreements, the native title group can, among other matters, provide consent for the doing of future acts.

An ILUA can be negotiated and registered over areas where native title has, or has not yet, been determined to exist. It can be part of a native title determination, or agreed separately from a native title claim.



What is the *Victorian Traditional Owner Settlement Act*?

The *Traditional Owner Settlement Act 2010* (TOS Act) is a Victorian law which provides for an out-of-court settlement of native title and resolution of land justice. The TOS Act seeks to advance reconciliation and promote partnerships between the State of Victoria and Traditional Owners. It also allows the Victorian Government to make agreements with Traditional Owners to recognise their relationship to land, and provide for certain rights on public land and other benefits. The agreements are usually accompanied by an ILUA that settles native title claims, including compensation.

How will the TOS Act agreement affect the Taungurung peoples' native title?

The extinguishment of any native title will only be able to occur with the consent of the Taungurung Land and Waters Council Aboriginal Corporation.

Any acts that occur in the agreement area that are future acts are consented to under the ILUA. In entering into the TOS Act agreement, the Taungurung people have agreed that they will not make any future native title claims, including for compensation, through the Federal Court.