

The Relevance of Statutory Land Rights to Native Title and Empowerment

*Andrew Chalk and Sean Brennan**

The first legal attempts to restore Aboriginal ownership and control over land after 180 years of dispossession involved government grants of title under beneficial legislation. These statutory land rights regimes began in South Australia in 1966¹ – native title recognition, through the common law courts, came much later.² Land rights regimes vary around Australia and they all have features that differentiate them from native title. But comparing land rights and native title is important, not least because they both prompt the question whether Indigenous-specific property rights can deliver greater political and economic empowerment to Aboriginal and Torres Strait Islander people. The best-known example of statutory land rights is the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), initiated by the Whitlam government and brought into being by the Fraser government. This chapter focuses on a lesser-known but important land rights regime that operates in New South Wales and suggests some lessons it might hold for native title and Indigenous empowerment.

Background

The *Aboriginal Land Rights Act 1983* (NSW) (NSWALRA) has operated, fairly quietly in the public sphere, for more than 30 years. Though it has achieved some remarkable results, few non-Indigenous Australians are familiar with it. The Preamble to the Act is a window into its character and significance. It starts with the recognition that land in New South Wales ‘was traditionally owned and occupied by Aborigines’ – an official rejection of *terra nullius* nearly a decade before the *Mabo* decision. It adds an acknowledgment that land ‘is of spiritual, social, cultural and economic importance to Aborigines’, uniting interlocking elements of connection that are often fragmented or ignored in Australian law. Setting the restorative tone for what the Act sets out to do, the Preamble concludes with the acceptance of ‘the need of Aborigines for land’ and ‘that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation’.

* Andrew Chalk over many years has provided legal advice to New South Wales Aboriginal Land Council and several Local Aboriginal Land Councils.

1 *Aboriginal Lands Trust Act 1966* (SA).

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

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