

Native Title

Newsletter



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL
AND TORRES STRAIT ISLANDER STUDIES

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Welcome!

to the Native Title Newsletter in 2017

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This year marks the 25th anniversary of the *Mabo v Queensland [No 2]* (1992) (*Mabo*) decision in the High Court of Australia. In recognising the rights of the Meriam people to their country in the Torres Strait Islands, the High Court held that through native title Australian law recognises Indigenous peoples' held pre-existing rights to their land and waters and these rights survived to be protected by the common law.

Over three editions this year, AIATSIS celebrates the *Mabo* case and subsequent history of native title. Through our articles, we acknowledge both the successes and difficulties that native title has, and continues to bring, to Aboriginal and Torres Strait Island communities throughout Australia.

We will feature interviews, research articles, youth perspectives and community organisations.

Stay in the loop by subscribing to the Newsletter online or if you would like to make a contribution, please contact the NTRU for further information.

Image: Port Kennedy, Thursday Island.
Photo: Daniel Walding.



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Aboriginal and Torres Strait Islander people are respectfully advised that this publication may contain names and images of deceased persons, and culturally sensitive material. AIATSIS apologises for any distress this may cause.



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AN INTRODUCTION TO Edward Koiki Mabo

DR BELINDA BURBIDGE

RESEARCH FELLOW AIATSIS

EDWARD KOIKI MABO, A MERIAM man from the island of Mer (Murray Island) in the Torres Strait, was a key plaintiff in the *Mabo v Queensland (No 2)* 1992 (*Mabo*) case in the High Court of Australia. His name has become synonymous with this landmark legal decision; but who was the man behind the case?

EARLY LIFE

Edward Koiki Mabo was born on 29 June 1936, on the island of Mer in the Torres Strait. After his mother died he was adopted by his maternal aunt and uncle, Maiga and Benny Mabo, in accordance with Islander laws and custom.¹ From an early age, Koiki Mabo learnt about Meriam language (Meriam Mir), kinship and other cultural beliefs and practices.²

As a young adult in 1959, he moved to Townsville, Queensland and held a variety of jobs including working on pearling boats, cutting cane and as a railway fettler.³ He soon married Bonita Neehow, an Australian-born South Sea Islander, and they raised ten children together.⁴

Koiki Mabo was an activist in the 1967 referendum campaign and helped found the Townsville Aboriginal and Islander Health Service. He was the first secretary of the Aboriginal Advancement League in Townsville and was associated with the Townsville Trades and Labour Council.⁵

BLACK COMMUNITY SCHOOL

In 1973, Koiki Mabo, with support from parents and the Trades and Labour Council, opened the Black Community School in Townsville – one of the first in Australia. The school commenced with 10 students and two teachers who were disenchanted with the approach to education by Queensland's State Education system and worked for half pay. At its peak in the late 1970s the school had 45 students.⁶



Although the school was regarded with hostility within the non-Indigenous Townsville community and attacked by media and politicians for being 'racist' and 'apartheid in reverse', the school continued to become an important centre for the Torres Strait Islander community in Townsville. The school closed in 1985 due to a lack of funding or secure site.⁷

LEGAL RECOGNITION OF RIGHTS TO HIS LAND

The issue of land rights became a stronger focus for Koiki Mabo in 1974, while working on campus at James Cook University and meeting

historians Noel Loos and Henry Reynolds, who recalled:

...we were having lunch one day when Koiki was just speaking about his land back on Mer, or Murray Island. Henry and I realised that in his mind he thought he owned that land, so we sort of glanced at each other, and then had the difficult responsibility of telling him that he didn't own that land, and that it was Crown land. Koiki was surprised, shocked... he said and I remember him saying 'No way, it's not theirs, it's ours.'⁸

In 1981, Koiki Mabo gave his first speech at a land rights conference

at James Cook University explaining the Meriam system of land tenure, inheritance and kinship that Mabo and his community were part of on Mer.⁹ A lawyer in the audience noted the significance of his speech and suggested there should be a test case to claim land rights through the court system.

Perth based solicitor Greg McIntyre agreed to take the case representing Mabo and the Meriam people, and recruited barristers, the late Barbara Hocking, Ron Castan and Bryan Keon-Cohen.

In 1982, Koiki Mabo, along with fellow Mer Meriam Le - Reverend David Passi, Celuia Mapoo Salee, Sam Passi and James Rice launched a case in the High Court of Australia.¹⁰ With Koiki Mabo as the first named plaintiff, the case - *Mabo v Queensland (No 2)* 1992 - became known as the 'Mabo Case'.¹¹

Koiki Mabo applied successfully for research grants to conduct research for the case from a range of places, including AIATSIS. He proposed to research traditional boundaries, in particular 'tribal area, clan land, individual or family land, sacred sites and restoration of shrines and zogos of each tribe and clan groups'.¹¹ He saw many possibilities for the research on Mer other than just the native title claim; for example, in his grant application, he noted that site recordings could be used to teach Torres Strait Islander youth and to collect materials for use in Torres Strait Islander schools and colleges.¹²

Koiki Mabo set an example for local Indigenous people asserting control over their own research interests. He stated in his AIATSIS grant application that it is important for Islanders to carry out their own research because they are of 'no academic interest to professional researchers' from the mainland.¹³

The *Mabo* case was long and difficult, and the legal counsel, Koiki Mabo and Mer community members had to fight for funding to ensure the continuation of the case the proceedings made history when Supreme Court judge, Justice Moynihan heard evidence on Mer on behalf of the High Court.

By the mid-1980s, new legal battles arose. In 1985, the Queensland Government passed the *Queensland Coast Island Declaratory Act 1985* in attempt to negate High Court claims. The Act stated that when the Torres Strait Islands were annexed by the Queensland Government under the *Queensland Coast Island Act 1879*, the title to the islands was transferred to the state government and not subject to other claims.¹⁴ However, in 1988 the High Court decided that the *Queensland Coast Island Declaratory Act 1985* was inconsistent with the *Commonwealth Racial Discrimination Act 1975* (Cth) and the *Mabo* proceedings continued.¹⁵

Ten years after the case was lodged, on the 3 June 1992, the High Court of Australia decided in favour of Eddie Koiki Mabo and his fellow plaintiffs. The Meriam people are entitled as against the whole world, to possession, occupation, use and enjoyment of the lands of the Murray Islands.¹⁶

Unfortunately, Koiki Mabo did not live to see the *Mabo* judgment; he tragically passed away from cancer aged 56 years old on 21 January 1992.¹⁷ Sam Passi also passed away during the hearing on 1 October 1990, aged 78 years old.¹⁸

The High Court inserted the legal doctrine of native title into Australian law. In recognising the traditional rights of the Meriam people to their country in the Torres Strait Islands, the Court also held that native title existed for all Indigenous peoples in Australia who continue to hold rights the rights in their lands under their own laws and customs. Those rights survived the invasion of the British, assertion of British sovereignty and establishment of the colonies from 1788 to be recognised to be recognised and protected by Australian law.¹⁹

¹ Noel Loos, 'Mabo, Edward Koiki (Eddie) (1936–1992)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, published online 2016, <<http://adb.anu.edu.au/biography/mabo-edward-koiki-eddie-16122/text28064>>.

² Loos, Noel and Mabo, Eddie. 1996. *Edward Koiki Mabo: His life and struggle for land rights*. Queensland: University of Queensland Press, p. 5.

³ Ibid, p. 9.

⁴ Bonita Mabo, 'It's time, says Bonita Mabo', Sydney Morning Herald,

published 1 August 2004, <<http://www.smh.com.au/articles/2004/08/01/1091298558059.html?from=storylhs>> and Kennedy, Duncan. Eddie Mabo, the man who changed Australia, BBC News, Sydney, published online 6 June 2012, <<http://www.bbc.com/news/magazine-18291022>>.

⁵ Loos and Mabo, 1996, p.10.

⁶ Trevor Graham, 'A brief history of the black community school', *Mabo: the native title revolution*, published online – no date, <<http://www.mabonativetitle.com/info/historyOfBCS.htm>>.

⁷ Ibid.

⁸ Thomas Rickard (2 November 2008). 'We Are No Longer Shadows'. First Australians. Australia. 13:45 minutes in. SBS. <<http://www.sbs.com.au/ondemand/video/11723331504/first-australians-we-are-no-longer-shadows>>.

⁹ Trevor Graham, 'Eddie Mabo's address to 1981 Land Rights Conference', published online – no date, <<http://mabonativetitle.com/info/doc4.htm>>.

¹⁰ AIATSIS. 1994. *The Little Red Yellow Black Book*. Canberra: Aboriginal Studies Press, p. 116.

¹¹ Mabo, Edward, Research grant application to AIATSIS, 11 November 1984, closed AIATSIS TRIM file, p. 20.

¹² Mabo, 11 November 1984, p. 20.

¹³ Ibid, p. 20.

¹⁴ ABC, Mabo – a timeline, published online 3 June 2012, <<http://www.abc.net.au/news/2012-06-03/mabo-a-timeline/4047186>>.

¹⁵ SBS Staff, Timeline: native title in Australia, SBS News, published online 3 June 2012, <<http://www.sbs.com.au/news/article/2012/06/03/timeline-native-title-australia>>.

¹⁶ The two *Mabo* cases include *Mabo v Queensland* (1988) HCA 69 (*Mabo No 1*) and *Mabo v Queensland (No 2)* (1992) HCA 23.

¹⁷ Noel Loos, 'Mabo, Edward Koiki (Eddie) (1936–1992)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, published online 2016, <<http://adb.anu.edu.au/biography/mabo-edward-koiki-eddie-16122/text28064>>.

¹⁸ Nonie Sharp, 'Passi, Sam (1912–1990)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, published online, n.d, <<http://ia.anu.edu.au/biography/passi-sam-15022/text26218>>.

¹⁹ Native Title Research Unit, Overturning the doctrine of Terra nullius: The *Mabo* case, Canberra: AIATSIS Research Publications, published online no date, <<http://aiatsis.gov.au/sites/default/files/docs/research-and-guides/native-title-research/overturning-doctrine-terra%20nullius-the-mabo-case.pdf>>.

Quandamooka Nation Building



An interview with

CAMERON COSTELLO QUANDAMOOKA YOOLOUBURRABEE ABORIGINAL CORPORATION

INTERVIEWED BY
THAARRAMALI PEARSON RESEARCH OFFICER AIATSI

The Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) is the Registered Native Title Body Corporate (PBC) responsible for management of the native title rights and interests of the Quandamooka people of the Moreton bay area in Queensland. The corporation is directed by a ten person board of Traditional owners and led by Chief Executive Officer and traditional owner, Cameron Costello. Cameron has been the CEO of the QYAC for three and a half years, and prior to that was a Chair and family representative.

In the interview below Cameron describes some of the changes QYAC have experienced in the past few years, the challenges they have faced, the successes they have had, and their plans for the future.

QYAC HAVE A NATIVE TITLE consent determination over 54,000 hectares of land and sea on and around Minjerribah (North Stradbroke Island) and a claim registered over Moorgumpin (Moreton Island). The consent determination was made on the 4 July 2011 by the Federal Court of Australia and included a number of benefits for Quandamooka people, including Indigenous Land Use Agreements (ILUAs) with the Queensland Government and Redland City Council. QYAC was set

up under the *Native Title Act 1993* (Cth) (Native Title Act) to manage the benefits of the native title determination.

As a result of our determination we have been able to take over the management of the Holiday Park and foreshore camping business known as Straddie Camping. QYAC has formed a joint investment partnership with Indigenous Business Australia (IBA) to repackage and revitalise this business. After this success we are now working with IBA for future tourism related activities that can value add to our initial investment.

Another major benefit we have had as a result of our native title determination is in the joint management of the Naree Budjong Djara National park. We are involved in land management, Caring for country, and we employ our own mob as rangers. We have both national park rangers and Department of Environment and Heritage Protection (EHP) rangers that work on our native title land.

QYAC have also been developing the community ranger program for about two years and we now have around 12 community rangers. This program is essentially about developing our young people with the skills to go on to become park rangers or council employees. Our

community rangers have done a Certificate III in Conservation and Management and we have created a pipeline of projects to further develop those young people as future leaders of our community.

Between QYAC and Straddie Camping we now have around 40 Quandamooka people in employment. QYAC is now in a nation building phase. We have undertaken large planning projects to look at how to best unlock our native title land for social, cultural, and economic development purposes.

In May 2016, the *North Stradbroke Island Protection and Sustainability and Other Acts Amendment Bill 2015* was passed in the Queensland Parliament.¹ This legislation enforces the cessation of the largest sand mine on Minjerribah by 2019. The bill was introduced to allow new and exciting opportunities for the Minjerribah community and was supported by the Queensland Government's North Stradbroke Island Economic Transition Strategy.

This new legislation has opened a new world for the Quandamooka people. The Economic Transition Strategy (ETS) is a \$20 million package that has twenty three initiatives of which QYAC will be delivering about eleven. These initiatives include a whale watching permit, whale watching infrastructure

such as an interpreter facility, a Minjerribah culture centre, further upgrades to our campgrounds, an Indigenous business development fund to help kick-start other businesses in a whole range of different sectors, and the refurbishment of our current site into an education and training hub. QYAC is now moving to deliver major projects on country which are going to further strengthen job opportunities and build capacity in the community. This is a pretty exciting time for us. The ETS package also includes the expansion of our land and sea ranger program with another five positions for Indigenous rangers.

As the proposed Toondah harbour development on the mainland side of the bay has native title and cultural heritage implications the Quandamooka people have authorised for us [QYAC] to lodge a mainland claim. As well as the native title area that has already been determined we are dealing with two other claims; the Moreton Island claim and the mainland claim. The Moreton island claim has been

lodge and the mainland claim is due to be lodged in the coming weeks. The claims are part of our ongoing role to secure the rest of our traditional estate.

As QYAC are also a registered cultural heritage body we've undertaken a lot of cultural heritage surveys across Redland City Council township areas, our campground areas and the national park. Through these surveys we are able to safeguard and protect our significant archaeological and cultural sites. We have also developed a Quandamooka world heritage area listing that we are working with the State Government to progress as we want to have world heritage listing to protect nature and preserve culture. As part of our cultural heritage work QYAC have developed our own festival which is now in its third year. The Quandamooka festival goes over a three month period and has over 50 activities to celebrate Quandamooka culture, Country, and people.

QYAC has grown rapidly, we now have 40 staffed positions and are involved in a whole range of projects. Our work has brought with it a whole

range of challenges, including organising human resourcing and in-house legal work. The biggest challenge we have faced is in building the capacity within our organisation to keep moving forward. If QYAC as an organisation is not functioning well our partnerships with IBA, Local Council and State Government will not be as effective. Whilst we have been operating really well, with our expansive and rapid growth the challenge for us is to have adequate resources to continue to grow and deliver projects and partnerships.

Most of our key challenges come from external influences in making sure that State and Local Government deliver on their requirements under our ILUAs and in working with the culture of agencies not used to dealing with QYAC as land holders. There is still a lot of negativity around native title and what it brings, support from local politicians would be helpful, but quite often we don't get that.

QYAC is now firmly entrenched within the tourism sector of Brisbane. We are working with Tourism and Events Queensland, Brisbane Marketing and the Redlands City Council Tourism to establish Quandamooka Country as a global eco-cultural tourism destination. It's really exciting that a lot of industry agencies are recognising the necessity and the opportunity to engage with traditional owners to deliver a truly unique product for their global tourism markets.

Almost six years on from our first native title determination, QYAC has undertaken substantial capacity building projects and has grown from a native title claim group to a 570 member corporation in the process of rebuilding and strengthening the Quandamooka nation. The transition away from sand mining on Minjerribah has allowed QYAC to explore a variety of cultural and tourism ventures that have produced a wide range of income generating employment opportunities for Quandamooka traditional owners.

¹ Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef The Honourable Steven Miles, Bill to phase out sand mining on North Stradbroke passed in Parliament (Thursday, May 26, 2016).

Opposite page top: Cameron Costello, QYAC CEO. Credit: QYAC.

Opposite page: One Mile Creek, QLD. Credit: Helen Groombridge.

Left: QYAC rangers eradicating asparagus fern from dunes. Credit: Darren Burns



Budj Bim

CULTURAL LANDSCAPE WORLD HERITAGE NOMINATION

DENIS ROSE GUNDITJ MIRRING TRADITIONAL OWNER ABORIGINAL CORPORATION

ON FRIDAY, 20 JANUARY 2017, Prime Minister Malcolm Turnbull visited Tae Rak (Lake Condah) where he announced the Commonwealth Government has added the Budj Bim Cultural Landscape to Australia's tentative list for World Heritage nomination. The announcement was made in co-operation with the Victorian Premier, Daniel Andrews and the Minister for the Environment and Energy, Josh Frydenberg.

The Prime Minister said 'All of us have been deeply moved to see such ancient structures of engineering, 7,000 years old, showing the ingenuity, the understanding of the natural environment by your ancestors - the Gunditjmara people, here on this lake, working with the landscape, understanding the country and building those remarkable structures, which are surely worthy of being on the World Heritage List'.

He added, 'If successful, and we anticipate it will be, the Budj Bim Cultural Landscape will become the first Australian place to become World Heritage Listed exclusively for its

Aboriginal cultural values. You've all been tireless advocates for this. You all understand its global significance. It was the first place to be listed on Australia's National Heritage List back in 2004. A world Heritage listing would be very appropriate recognition of its significance and its heritage values'.

The Budj Bim Cultural Landscape, located in south-west Victoria, includes evidence of one of the world's largest and oldest aquaculture systems, dating to about 6600 years ago. Gunditjmara people constructed an extensive and technologically sophisticated aquaculture system on the Budj Bim lava flow and were able to sustainably harvest and farm large quantities of the migrating Kooyang (short finned eel) by manipulating seasonal flooding through the creation of stone channels.

The Budj Bim Cultural Landscape also includes evidence of permanent or semi-permanent settlement with one property having more than 140 recorded stone house sites. These stone structures consist of C-shaped features, usually 3-4 metres in diameter with 3-5 tiers of stones forming low walls.

On 30 March 2007, the Federal Court of Australia delivered a consent determination over almost 140,000 hectares across the southwest of Victoria, recognising the Gunditjmara People's native title rights over the majority of the area, which included the Budj Bim lava flow.

'The Gunditjmara were able to prove their strong and unrelenting connection to this area where their ancestors farmed eels for food and trade at the time of European settlement and back



Top and above: Aquaculture systems, South-Western Vic. Credit: Tyson Lovett-Murray.



Josh Frydenberg, Prime Minister Malcolm Turnbull, Aunty June Gill, Aunty Laura Bell, local State member Roma Britnell, Aunty Sandra Onus and member for Wannan and Minister for Veteran Affairs Dan Tehan. Credit: Don Tunney.

through millennia' (Justice North at the Gunditjmara Native Title consent determination).

Gunditj Mirring Traditional Owners Aboriginal Corporation was established in 2005 by Gunditjmara traditional owners to progress their rights and interests in native title, cultural heritage and caring for country.

Gunditjmara currently own and manage approximately 3,000 hectares of land along the Budj Bim lava flow and most of these properties are declared and managed as Indigenous Protected Areas (IPAs). There is also a co-operative management agreement for the Budj Bim (Mount Eccles) National Park where Gunditjmara have the majority on the management board.

Currently, a team of nine Budj Bim rangers manage, conserve, and protect the natural and cultural values of these properties. They work on a variety of jobs in the Budj Bim IPA, including the protection of cultural heritage sites, construction and maintenance of visitor facilities, weed and feral animal control, fencing, environmental monitoring, and delivering education programs for students on country.

The Victorian Government is strongly supportive of World Heritage listing for the Budj Bim Cultural Landscape and have committed \$8 million for the Gunditj Mirring Traditional Owners Aboriginal Corporation to implement stages one and two of the Budj Bim (Tourism) Master Plan. This Plan aims to support tourism infrastructure

projects, provide economic opportunities for the Traditional Owners, and strengthen their bid for World Heritage listing. The Budj Bim Master Plan presents a staged approach to developing the Budj Bim Cultural Landscape, to improve its protection and management and establish it as a sustainable, world-class tourism destination.

Now that Budj Bim is on the Tentative List the Gunditj Mirring traditional owners Aboriginal Corporation are preparing a comprehensive World Heritage nomination to be submitted to the World Heritage Committee by 1 February 2018.

For further information about Gunditj Mirring Traditional Owner Aboriginal Corporation, please see *the Gunditjmara Land Justice Story* and the Gunditj Mirring website.



Above: Prime Minister Malcolm Turnbull and Rangers on the lava flow. Credit: Michael Bell Jnr.



NATIONAL NATIVE TITLE CONFERENCE

2017

Our land is our birth right: MAB025 & beyond

Townsville, Queensland
5-7 June 2017

Rocky Cove, Townsville QLD.
Credit: David Lynam.



NATIVE TITLE LAWYERS FROM ACROSS THE COUNTRY MEET IN CANBERRA

NTRB LEGAL WORKSHOP 2017

STACEY LITTLE SENIOR RESEARCH OFFICER AIATSI

SHIANE LOVELL ENGAGEMENT OFFICER AIATSI

IN 2017 THE NATIONAL NATIVE TITLE Conference will be convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the North Queensland Land Council (NQLC) on the traditional lands of the Gurambilbarra Wulgurukaba people, Townsville Queensland.

The Conference seeks to highlight the challenges and opportunities of native title in the broader context of Aboriginal and Torres Strait Islander aspirations for their lands, waters and communities. The Conference aims to promote public debate, foster knowledge acquisition and sharing between native title holders and other parties. It is the leading annual event for professional development for Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSP) staff, government bodies, native title practitioners and academics.

Each conference is strongly supported by NTRB/NTSP native title claimants and holders, their legal counsel, native title practitioners such as anthropologists, government institutions and departments, politicians, judges, academics and others.

2017 marks 25 years since the High Court of Australia's momentous *Mabo* decision. The Court overturned *terra nullius* and recognised the continuity of Aboriginal and Torres Strait Islander peoples' rights to lands and waters under Indigenous laws and customs.

By acknowledging a wrong and seeking to make it right, the *Mabo* decision occupies a vital place in the story of Australia. In the past 25 years, Aboriginal and Torres Strait Islander peoples have seized the opportunities the decision presented, though the way has not been easy.

The 2017 National Native Title Conference is an opportunity to reflect upon the impact of the decision and examine how we can do better. It is a chance to honour those who fought for recognition and learn from those who are forging new paths today.

The Conference program includes:

- Day 1: NTRB/NTSP and PBC program (for NTRB/NTSPs, Prescribed Bodies Corporate)
- Day 1: Welcome reception
- Day 2 and 3: Public program
- Day 3: Conference dinner

CALL FOR PAPERS OPEN

We are now calling for proposals that will contribute to this discussion and target the conference themes: *looking back, looking around us, looking forward*

Submit your call for papers applications now!

The deadline for submissions has been extended until **Friday 14 April 2017** however decisions to accept abstracts will be made on a rolling basis.

If you have any questions in relation to the conference program, please contact:

Conference Manager
Shiane Lovell
Engagement Officer
Public Engagement Program Area
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NATIVE TITLE LAWYERS FROM eight Native Title Representative Bodies and Service Providers (NTRB/NTSPs) gathered at AIATSIS in February for two days of intensive discussions about native title law.

The event was organised and hosted by AIATSIS and fills an important gap in professional development and networking opportunities for native title lawyers.

Participants included legal professionals from Central Desert

Native Title Services, Central Land Council, South Australian Native Title Services, Kimberley Land Council, North Queensland Land Council, NTSCORP, Cape York Land Council, and the Northern Land Council.

The workshop was facilitated by Dr Lisa Strelein, AIATSIS Executive Director of Research, and was chaired and included presentations by participating lawyers who shared their knowledge and experience on a wide range of issues.

Topics included native title compensation, ethical considerations

of regional claim authorisation, and the implications of recent Federal Court decisions. The program also featured a session on framing native title rights and interests by leading native title barrister Rob Blowes SC.

Participants were enthusiastic about the value of the workshop for maintaining a community of practice of native title lawyers. Workshops like these enable AIATSIS to support best practice and knowledge exchange across the native title sector, and inform the development of our research and communication activities.



Top: The workshop attendees.
Above left: Lisa Strelein addresses workshop participants.
Above right: Rob Blowes SC discusses the framing of native title rights and interests.
Credit: Andrew Turner, AIATSIS.

Native title SNAPSHOT

THE BIRTHPLACE OF NATIVE TITLE - MER AND THE MABO DECISION

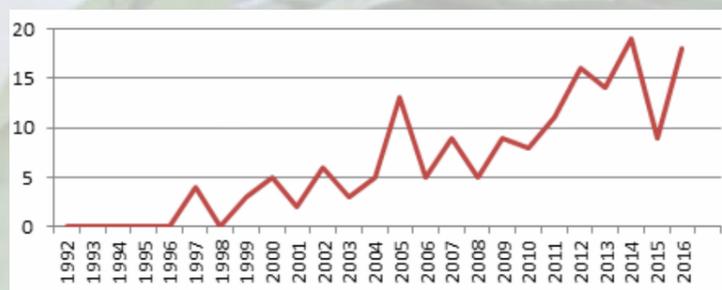
It has been 25 years since the historic *Mabo* decision which recognised the native title rights and interests of the Meriam people, traditional owners of the Murray Islands (which include the islands of Mer, Dauer and Waier) in the Torres Strait. The judgments of the High Court in the *Mabo* case inserted the legal doctrine of native title into Australian law and recognised the fact that Indigenous peoples had lived in Australia for thousands of years and enjoyed rights to their land according to their own laws and customs. Those rights survived and are now recognised and protected by the Australian Legal system.

Following the decision in *Mabo vs Queensland (No 2)* 1992, the *Native Title Act 1993 (Cth)* (NTA) established a statutory regime for claiming and recognising native title land in Australia. Provided is a snapshot of the native title sector twenty five years after *Mabo*.

PRESCRIBED BODY CORPORATE REGISTRATION

PBCs are created to manage and protect native title rights and interests following a determination.

NUMBER OF PBC REGISTRATIONS BY YEAR



HOW MUCH OF AUSTRALIA IS RECOGNISED NATIVE TITLE ?

Year	% of Australia under Native Title
2000	-
2005	7.9
2010	12.6
Currently	31.3

TYPES OF NATIVE TITLE ACROSS AUSTRALIA



NORTHERN TERRITORY

Total PBCs	Small	Medium	Large	
NT	21	18	3	0

HOW MUCH OF NT IS UNDER NATIVE TITLE?



QUEENSLAND

Total PBCs	Small	Medium	Large	
QLD	79	64	15	0

HOW MUCH OF QLD IS UNDER NATIVE TITLE?



WESTERN AUSTRALIA

Total PBCs	Small	Medium	Large	
WA	39	23	13	3

HOW MUCH OF WA IS UNDER NATIVE TITLE?



SOUTH AUSTRALIA

Total PBCs	Small	Medium	Large	
SA	15	7	6	2

HOW MUCH OF SA IS UNDER NATIVE TITLE?



NEW SOUTH WALES

Total PBCs	Small	Medium	Large	
NSW	6	5	1	0

HOW MUCH OF NSW IS UNDER NATIVE TITLE?



VICTORIA

Total PBCs	Small	Medium	Large	
Vic	4	0	2	2

HOW MUCH OF VIC IS UNDER NATIVE TITLE?



PBC SNAPSHOT

Nationally, 164 PBCs manage 2 412 614km² of native title land across Australia. This is more land mass than the combined areas of the United Kingdom, Ireland, the Netherlands, Germany, Belgium, France, Spain, Portugal, Italy and Austria.

There are 117 small PBCs, 40 medium PBCs and 7 large PBCs.

*Size of PBCs based on Office of the Registrar of Indigenous Corporations (ORIC) classifications. The size of a corporation is based on a corporation's income, assets and its number of employees in a single financial year.

AUSTRALIAN CAPITAL TERRITORY AND TASMANIA

To date, there have not been any successful native title determinations in the ACT or Tasmania. Both the ACT and Tasmania do, however, have land co-management plans with Aboriginal representative organisations.

NATIVE TITLE AT A GLANCE

Over the last 25 years the native title system has experienced various changes, challenges, pitfalls and successes. In its first 8 years there were few native title determinations, however due to a number of changes to legislation, state policy and native title practice the number of native title determinations increased after 2000. As of the 31st of December 2016 there have been 319 successful determinations.

PBCs play a vital role in the native title system in managing and protecting native title rights and interests following a successful determination. The first PBC – the Dughutti Elders Council (Aboriginal Corporation) RNTBC – was registered as a PBC with ORIC in April 1997. The PBC sector is fast expanding with a 70% increase in the number of PBCs nationally from 92 in 2010–11 to 155 in 2014–15.

Growing Up

NATIVE TITLE

BHIAMIE WILLIAMSON SENIOR RESEARCH OFFICER AIATSIS

AS A YOUNG ABORIGINAL MAN born in the 80s, my experience with native title differs from the common narrative. Growing up at the height of *Mabo* case and the ensuing native title process, mine and my brothers' upbringing are littered with memories of driving countless hours, sitting in meetings or listening through the door from the outside. These opportunities presented us with sustained opportunities to meet our families and grow up with strong connections to our peoples. We also gained a radical insight into the inner workings of the native title process, and the conflict that protracted negotiations (especially in the early days) often provoked in our communities. Whilst we were too young to understand the larger political and social forces at work during this time, the significance and enormity of this era is engrained on our collective memory.

Connecting with other Aboriginal and Torres Strait Islander people who also grew up as part of this generation, I know that my experience is not unique. 25 years after *Mabo* decision, there now exists a significant community of young Aboriginal and Torres Strait Islander people with personal stories of growing up in the era of native title.

Many of us have completed or are currently completing tertiary education and many have developed strong working histories with invaluable experiences in the public, private and tertiary sectors. Considering our upbringing and current circumstances, it may be reasonable to assume that our generation is heavily involved with native title in our communities. However, the reality is that many of us are farther from the native title process now than we have ever been. Why is this so? Is native title not seen as a valuable form of engagement that would satisfy both our personal and career ambitions? Did our experiences of growing up with native title plant seeds of dissatisfaction or discontent? Or are there larger forces that go unexamined in what has become for some, a lucrative industry? Some of these questions have already been examined by older generations with a much longer history working with and/or for government, private corporations and our communities.

Firstly, in order to attain tertiary qualifications and professional experience, a great many young people have relocated from their homelands to the cities and towns where greater opportunities exist. This is not new. However, as the

world and our communities become more closely connected through digital communications and online platforms, the opportunity for younger generations living off-Country to remain linked to their communities is very real. Furthermore, most (if not all) Native Title Representative Bodies and Native Title Service Providers (NTRB/NTSPs) are located in these larger urban sprawls; I will return to this later. All things considered, it could be argued that the mobility of younger generations of Aboriginal and Torres Strait Islander people has the capacity to improve, rather than impair, our opportunities to be involved in native title. So I return to the central question, why is our generation largely absent from the native title process?

One theory that often gains traction is that young Aboriginal and Torres Strait Islander people are disengaged or disinterested. Stories of failures in education and unemployment exist not only in the mainstream media, but in our own communities. In the recent study, 'Gender and generation in native title', Buchanan identifies:

A key generational concern in light of the distinctive demographic profile of the Aboriginal and Torres



Above: Youth forum participants, including AIATSIS Council Member Geoffrey Winters at the 2016 National Native Title Conference. Credit: Andrew Turner, AIATSIS.

Strait Islander population is ensuring succession in cultural and corporate leadership. Underlying this concern is the fact that 'there are fewer "older" Indigenous people available to take leadership and mentoring roles, and there are growing numbers of unemployed younger people with low educational outcomes.'¹

There is no questioning the concerns or experiences of the person or people interviewed in this study, as these are local concerns and conditions vary greatly. However, it is incumbent upon us to question the story that facts and figures tell, as data and statistics have the ability to hide truth as well as uncover it. In this instance, the number of young people with low educational outcomes and who may be unemployed has indeed increased. But so has the number of young Aboriginal and Torres Strait Islander people attaining tertiary qualifications and entering employment.² These trends are symptomatic of the general population growth of Aboriginal and Torres Strait Islander people, with youth the largest population demographic. Is it not reasonable to conclude then, that most (if not all) social, economic and educational (among other) indicators measured by participation will increase? Another important distinction not made in these studies, and of particular importance to our communities, is

that being uneducated is not the same thing as being unintelligent. Too often data collected on or about our communities is threaded with carefully selected opinions to create a narrative of disinterest, in this instance, with native title.

There is a widely held perception that places young Aboriginal and Torres Strait Islander people as the issue, when in fact, this generation is a significant part of the solution. Is it possible that the perceived lack of interest in native title (and other vital community services) among young Aboriginal and Torres Strait Islander people is symptomatic of the internalisation of a larger deficit discourse connecting youth with disengagement? Even though there are many youth whom are, or want to be, engaged with their community. Isn't it also possible that some community leaders hide behind sentiments of youth disengagement in order to remain in positions that perhaps, they should have stepped down from long ago? These questions are asked simply to provoke deeper reflection on the central issue: Where is our generation represented in native title processes?

Returning to the before-mentioned opportunities in larger cities, a final question to consider: as the generation that literally grew up with native title, are we represented adequately in our NTRB/NTSPs? As many more young Aboriginal and Torres Strait Islander people graduate

with tertiary qualifications, it would appear at face-value, to be the perfect fit. Yet scores of non-Indigenous professionals continue to occupy this space. Traditionally the domain of non-Indigenous lawyers and anthropologists, ecologists, scientists and land managers are swarming in ever-increasing numbers to these organisations. To be clear, no one is questioning the qualifications of individuals, whether non-Indigenous or otherwise, to be involved in this work. Looking from a larger perspective however, it is wrong not to question the continued rates (or lack thereof) of Aboriginal and Torres Strait Islander participation in these organisations? These are long-standing concerns in our communities. Megan Davis in a recent publication highlights,

The post-ATSIC exodus of Aboriginal people from the public service created a knowledge and skills deficit and crippled the quality of decision-making and outcomes... [F]or in the place of Aboriginal drivers now preside the all-powerful, all-knowing, risk and innovation-averse career bureaucrats.

This is particularly relevant in the native title context considering the role these organisations play in representing not only us, but our most vital asset, our Country.

In response to many of these concerns, AIATSIS held a youth forum at the 2016 National Native Title Conference. Delegates at the youth forum found commonality in their experiences with the native title process, both at the community and representative levels.³ Many participants expressed concern about being disengaged with their own native title organisations and representative bodies despite being claimants or rights holders.⁴ Significantly, many delegates expressed deep concern that they were not involved with the management of their rights and interests.⁵ This includes strategic community development, and the creation of opportunities that native title rights and interests are likely to promote or prohibit.⁶ Furthermore, many young delegates expressed that

they feel shame and fear from both senior group members as well as non-Indigenous native title 'professionals', if they attempt to speak up.⁷

These narratives of alienation from the processes of native title are both frequent and consistent. However, the desire among young Aboriginal and Torres Strait Islander people to make positive contributions to the livelihoods of their communities is also frequent and consistent. There is a high degree of confidence that our generation possesses the education, intelligence, passion and innovation necessary to create new possibilities, whilst representing our communities with respect, integrity, and strength.

The desire is not to displace senior cultural and community leaders, but rather, to complement their experience. Mentoring and supervising the development of young community members, carefully selected by senior cultural people, is ingrained into the fabric of our systems of traditional governance. There are strong elements in our communities that are of the opinion that it is up to us to create our own space and make our voices heard. Whilst there are slithers of truth in this view, it is also a lazy response to larger issues. Furthermore, this view flirts dangerously with the notion that those with the loudest voices have the right to be heard. This distinctive western leadership approach however, is incongruent with our traditional forms of governance and leadership.

As we reflect on *Mabo* and look to the future, there are many matters that require fresh perspectives. Chief among them is embedding young generations in every part of native title processes. Whatever the forces that conspire to dislocate young Aboriginal and Torres Strait Islander people from these significant political, legal and cultural processes, the time is now to find ways to overcome. Some PBCs have already taken steps to address these issues in their own community and should be applauded for doing so. However, additional questions go unaddressed. Are NTRB/NTSPs doing enough to recruit and retain young Aboriginal and Torres Strait Islander people? How are communities facilitating the sustained transfer of



Top & Above: Youth forum participants at the 2016 National Native Title Conference. Credit: Andrew Turner, AIATSIS.

both cultural and corporate knowledge from old generations to the new? And are our leaders taking a back seat, presenting opportunities and supporting young people to step up and speak up? Conversely, it is time for young Aboriginal and Torres Strait Islanders to take up the challenge. Agitating for a generational shift must be met equally with willingness and enthusiasm to stand up for our communities and each other.

The Native Title Youth Forum will take place again at the 2017 National Native Title Conference in Townsville. These forums are vital opportunities for people to connect and share experiences. The work to rectify this generational imbalance however, must happen at home, wherever that may be. Ask yourself, if you could send one of your young people to this forum, who would it be? There is an obvious next step that too often, doesn't get followed through. Perhaps with sustained support, the generation

'grown up' with native title can drive a new era of success, resurgence and strength in both our communities, and nationally. It is time to expect big things from your young people!

- ¹ G Buchanan, 2015, *Gender and Generation in Native Title*, AIATSIS Issues Paper series, Vol. 6, no. 3. <<http://aiatsis.gov.au/publications/products/gender-and-generation-native-title-director-demographics-and-future-prescribed-bodies-corporate>>.
- ² Creative Spirits, *Aboriginal Students in Higher Education*, <<https://www.creativespirits.info/aboriginalculture/education/aboriginal-students-in-higher-studies-at-university>>.
- ³ T Pearson & S Little, 'Report on the Indigenous Youth Forum', *NNTC Report on the Indigenous Youth Forum*, Australian Institute of Aboriginal and Torres Strait Islander Studies, October 2016, <<http://aiatsis.gov.au/publications/products/report-indigenous-youth-forum>>.
- ⁴ Ibid.
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ Ibid.

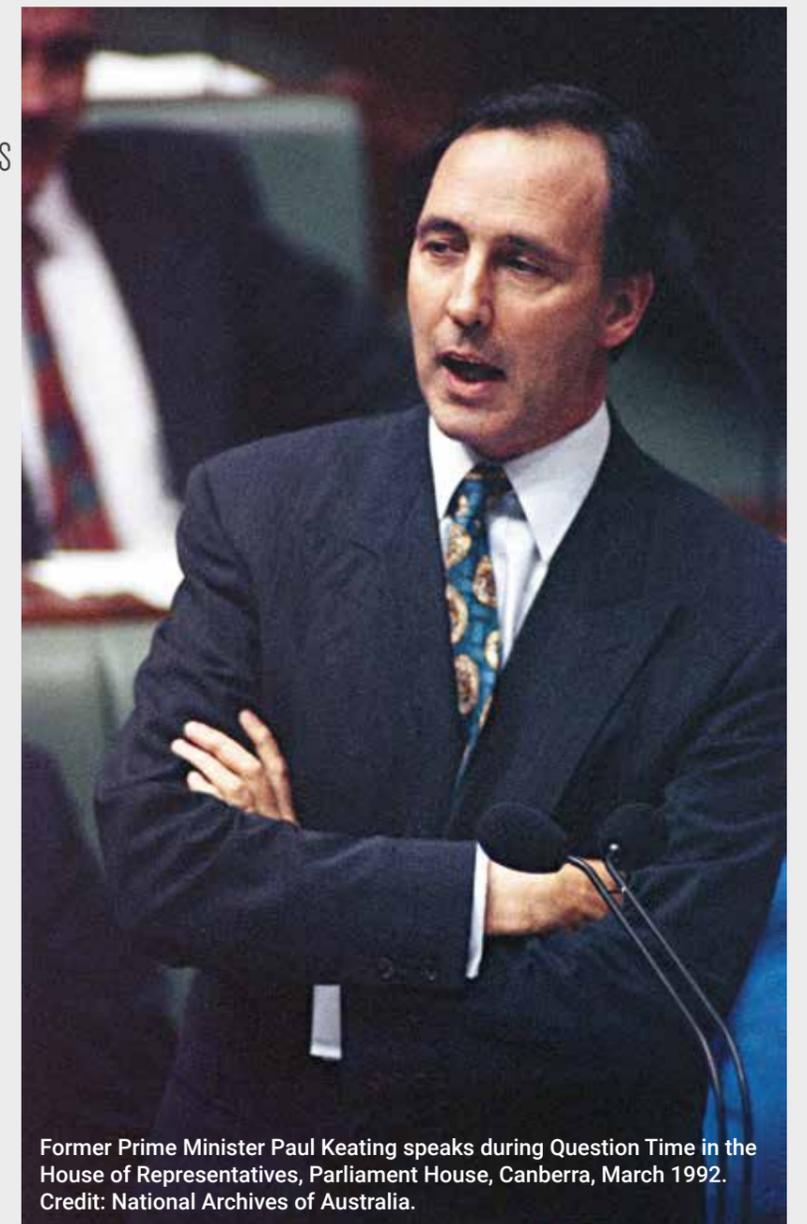
1992-1993 CABINET PAPERS REVEAL INTERNAL GOVERNMENT RESPONSE TO MABO

SAMANTHA McCLELLAND
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THIS YEAR AUSTRALIA MARKS 25 years since the High Court's decision in *Mabo v Queensland (No 2)*¹ recognising the rights and interests of the Meriam people to Mer in the Torres Strait, Queensland. *Mabo* spurred the Commonwealth Parliament to develop the *Native Title Act 1993 (Cth)* (the *Native Title Act*) which continues to govern the recognition of native title. On 1 January 2017, the National Archives released the 1992-1993 Cabinet Papers from confidence to reveal the workings of the Keating Cabinet as they considered their policy response to the *Mabo* decision.²

The newly released papers reveal the policy responses considered in light of the High Court's finding of common law native title in *Mabo*. The nine options were developed by an Inter-Departmental Committee made up of representatives from the Department of Prime Minister and Cabinet, the Attorney-General's Department, the Aboriginal and Torres Strait Islander Commission (ATSIC), and the Department of Primary Industry and Energy.

Ranked according to what the Committee considered to be least to most difficult, the options were:



Former Prime Minister Paul Keating speaks during Question Time in the House of Representatives, Parliament House, Canberra, March 1992. Credit: National Archives of Australia.



Above: A meeting of Aboriginal representatives, ministers and Former Prime Minister Paul Keating, 27 April 1993. Credit: National Archives of Australia.

1. To leave the determination of native title cases to the courts
2. To establish a commission of inquiry
3. To establish a consultation process to explore the interests of parties to native title claims
4. To begin a Crown land acquisition process
5. To facilitate test cases to resolves gaps in common law native title
6. To begin a process of negotiated settlements

7. To establish a fact-finding tribunal
 8. To create national or state-based native title legislation
 9. To create a national document of reconciliation.³
- In addition to the final options presented to Cabinet, the papers contained two other policies that were rejected early in the policy development process. The first of these was the option to entrench native title in the Australian Constitution; rejected because it would have put native title lands beyond the control of Parliament and

subject to determinations of the High Court. The other was to create a policy to extinguish common law native title, which was rejected by Cabinet over concerns of domestic division and international condemnation.⁴

From the date of the *Mabo* judgment on 3 June 1992 of consideration of these nine options, extensive consultation, and the longest debate in the history of the Australian Senate to pass the *Native Title Act*.⁵ The resulting form of the Act is one which reflects an attempt to balance the competing interests of Aboriginal and

Torres Strait Islanders, pastoralist and mining groups, the states and freehold landowners in the context of public and political uncertainty.

LEGAL PRESSURES

Despite the landmark recognition of rights, *Mabo* did not create a comprehensive system of common law native title. The decision did not fully determine how native title rights and interests were to be defined, or how they interacted with other interests in land such as pastoral and mining leases.⁶ These uncertainties deterred the Keating Cabinet from

leaving the development of native title law to the courts. Similarly, Cabinet was dissuaded from facilitating test cases as the Inter-Departmental Committee believed this would leave Parliament with little control over how native title law ultimately developed.⁷

Native title was brought within the purview of the Commonwealth's power to legislate by the operation of *Racial Discrimination Act 1975* (Cth), 'the race power' contained in section 51(xxvi) of the Australian Constitution, and section 109 of the Constitution, by which Commonwealth legislation overrides inconsistent state legislation.⁸ A legislative response to *Mabo* was seen as desirable for giving Parliament the control over how native title was to be implemented that was lacking from other proposed policies.

POLITICAL PRESSURES

While reconciliation was a strong priority in the wake of the report of the Royal Commission into Aboriginal Deaths in Custody, the Keating Government's hold on power looked tenuous: promises of economic growth were not realised and discontent with the status quo was high after 10 years of Labor governments. The Cabinet Papers note that 'easier' policy responses should not be taken up because they were too passive or reflected an unwillingness to act at a time when the government needed to show leadership.

The Cabinet papers reveal that the Inter-Departmental Committee labelled native title rights and interests as 'inevitable and obviously legitimate',⁹ but compromise was still required to build upon the *Mabo* decision and manage opposition from states, pastoral and mining interests, and a confused public fuelled by media reports that their 'backyards were at risk'.¹⁰ The Managing Director of Western Mining was strongly opposed to native title, calling *Mabo* 'an exercise in the politics of guilt'.¹¹ The State of Western Australia in particular was hostile to the High Court's findings given that only seven per cent of its land was held as freehold title, leaving the remainder potentially subject to the uncertain scope of common law native title.¹² The Western Australian Parliament

passed the *Land (Titles and Traditional Usage) Act 1993* to extinguish all native title in WA and the WA Attorney-General called for a referendum on the issue in July 1992.¹³ This placed pressure on the Keating government to ensure Commonwealth legislation was put into place quickly. While the Act was disallowed by the High Court because it was inconsistent with Commonwealth law under s 109 of the Constitution,¹⁴ the WA Government's actions illustrate the differential treatment that Indigenous groups could have faced if the Keating Cabinet had chosen to leave native title to state legislatures.

Although ATSIC supported the government's choice of a national scheme as the fastest way to resolve claims; there was significant discord within the Aboriginal and Torres Strait Islander community about how native title should operate.¹⁵ ATSIC preferred inalienable freehold title rather than a collection of rights and interests, called for the power of traditional owners to veto future acts on native title land, and opposed the suspension of the RDA in order to validate past extinguishing acts.¹⁶ Others, such as Aboriginal activist Michael Mansell, believed *Mabo* offered too little in the way of land justice.¹⁷ Reflecting on the development process, Paul Keating credits Lowitja O'Donoghue as chair of ATSIC for recognising that compromise was going to be needed to uphold the moral commitment to Indigenous Australians to implement native title.¹⁸

In October 1992, the Keating government launched a formal consultation process. By 10 December, Prime Minister Keating delivered the Redfern Park speech vowing to use *Mabo* as a turning point in the historical relationship between Indigenous and non-Indigenous Australians and urged listeners to ignore the hostility that had broken out in response to the *Mabo* decision.¹⁹ The speech signified his intentions not to depart from establishing native title legislation should he be re-elected.

Keating was returned to the Prime Ministership in 1993 by a narrow margin, taking this as a mandate to finalise *Native Title Act* negotiations.²⁰

“

Mabo is an historic decision - we can make it an historic turning point, the basis of a new relationship between indigenous and non-Aboriginal Australians.

The message should be that there is nothing to fear or to lose in the recognition of historical truth, or the extension of social justice, or the deepening of Australian social democracy to include indigenous Australians.

*There is everything to gain.*²⁶”

”

Keating still had to navigate hostile Council of Australian Governments (COAG) negotiations and the demands of Senate crossbenchers in order to pass the *Native Title Act*.²¹ The Act received royal assent on 24 December 1993.

The contested nature of the *Native Title Act* was reaffirmed by its amendment upon the Liberal Party's return to power. John Howard's '10 Point Plan' brought in sweeping changes to the Act to protect pastoral interests, and significantly diminished the protection afforded to native title rights and interests.²² Since then, Parliament has only amended the Act on three other occasions: those made in 2007 expanding the powers and functions of the National Native Title Tribunal with respect to mediation were reversed in 2009 to give primacy to the Federal Court in the pre-trial and trial stages of the claims process. Technical amendments were passed in 2010 to give effect to the COAG National Partnership Agreement on Remote Indigenous Housing. Parliament has sought to amend the Act on two further occasions. The amendments tabled in 2012 seeking to clarify the meaning of 'good faith' negotiating; enable parties to agree to disregard historical extinguishment of native title in areas such as parks and reserves; and streamline Indigenous Land Use Agreement (ILUA) processes were not passed into law.²³ The amendment Bill tabled in response to the recent *McGlade v Native Title Registrar*²⁴ decision affecting the authorisation of ILUAs was referred for inquiry to the Senate Legal and Constitutional Affairs Committee in March 2017.

Native title has grown from small beginnings on the island of Mer, now covering more than 30% of the Australian landmass, with around another 30% subject to registered native title claims.²⁵ Nevertheless, native title in Australia remains the contested space it was during the *Native Title Act* negotiations, inevitable due to the political compromise necessitated by competing interests.

¹ [1992] HCA 23.

² National Archives of Australia, *1992 and 1993 - Keating Government* (18 January 2017), <<http://www.naa.gov.au/collection/explore/cabinet/by-year/1992-1993/index.aspx>>.

³ Inter-Departmental Committee, *Submission No 738 to Cabinet of Australia, Cabinet in Confidence*, 9 October 1992, 23.

⁴ Ibid.

⁵ Parliament of Australia, *Bills debated for longer than 20 hours 1990-2016* (30 January 2017), <http://www.aph.gov.au/Parliamentary_Business/Statistics/Senate_StatsNet/legislation/longestdebate>.

⁶ Lisa Strelein, *Compromised Jurisprudence* (Aboriginal Studies Press, 2nd ed, 2009) 4.

⁷ Inter-Departmental Committee, *Submission No 738 to Cabinet of Australia, Cabinet in Confidence*, 9 October 1992, 23.

⁸ Ibid.

⁹ Ibid, 9.

¹⁰ Larissa Behrendt, 'The Long Path to Land Justice' (Speech delivered at the Eddie Koiki Mabo Lecture Series, James Cook University, 2006).

¹¹ John, Gardiner-Garden, 'The Mabo Debate - A Chronology' (Background Paper No 23, Parliamentary Research Service, Parliament of Australia, 1993).

¹² ABC, 'Judgement Day', Four Corners, 7 May 2012 (Richard Court), <<http://www.abc.net.au/4corners/stories/2012/05/03/3494661.htm>>.

¹³ John, Gardiner-Garden, 'The Mabo Debate - A Chronology' (Background Paper No 23, Parliamentary Research Service, Parliament of Australia, 1993).

¹⁴ *Western Australia v Commonwealth* [1995] HCA 47.

¹⁵ Paul Keating 'Time to revisit Native Title Laws' in Toni Bauman and Lydia Glick (eds), *The Limits of Change:*

Mabo and Native Title 20 Years On (AIATSIS Research Publications, 2012) 406, 407.

¹⁶ Lisa Strelein, and Toni Bauman 'Interview with Lisa Strelein: Reflections on the 20th Anniversary of Mabo' in Toni Bauman and Lydia Glick (eds), *The Limits of Change: Mabo and Native Title 20 Years On* (AIATSIS Research Publications 2002) 396, 397.

¹⁷ Michael Mansell, 'The Court Gives an Inch but Takes Another Mile: The Aboriginal Government Assessment of the Mabo Case' (1992) 2(57) *Aboriginal Law Bulletin* 4.

¹⁸ John, Gardiner-Garden, 'The Mabo Debate - A Chronology' (Background Paper No 23, Parliamentary Research Service, Parliament of Australia, 1993) 2.

¹⁹ Paul Keating, 'Redfern Speech' (Speech delivered at the launch of Australia's celebration of the 1993 International Year of the World's Indigenous Peoples, Redfern Park, 10 December 1992).

²⁰ Richard Bartlett, 'Political and Legislative Responses to Mabo' (1993) 23 *UWA Law Review* 352, 356.

²¹ Bartlett, Richard (1993) 'Political and Legislative Responses to Mabo' *UWA Law Review*, vol. 23, 352.

²² Native Title Amendment Act 1998 (Cth).

²³ Native Title Amendment Bill 2012 (Cth). [2017] FCAFC 10.

²⁴ National Native Title Tribunal, 'Maps' *Geospatial*, <<http://www.nntt.gov.au/assistance/Geospatial/Pages/Maps.aspx>>.

²⁵ Former Prime Minister Paul Keating, 'Redfern Speech' (Speech delivered at the launch of Australia's celebration of the 1993 International Year of the World's Indigenous Peoples, Redfern Park, 10 December 1992), <<http://primeministers.naa.gov.au/galleries/audio/transcript-m3983-749.aspx>>.

AIATSIS RESEARCH PUBLICATIONS CALL FOR SUBMISSIONS

FRANCES GLAVIMANS PROJECT MANAGER AIATSIS RESEARCH PUBLICATIONS

AIATSIS RESEARCH Publications is now accepting submissions from researchers and academics in Australia and internationally whose work has a connection with Australian Indigenous research.

AIATSIS Research Publications is an imprint of Aboriginal Studies Press, the publishing arm of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). It was formed in 2011, primarily as a vehicle for disseminating

the research work and findings of AIATSIS research and to provide a forum for new research and ideas in native title and Indigenous research. With direction and support from a distinguished Publications Advisory Committee (PAC), it contributes to AIATSIS's leadership in Indigenous research. We welcome new voices to the conversation.

Indigenous authorship or collaborations between Indigenous and non-Indigenous scholars is strongly encouraged.

Our publications include:

- papers in the series *Land, Rights, Laws: Issues of Native Title*
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- research reports
- research monographs, books and edited volumes.

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- they are unique works in the field of Indigenous research;
- the research that informs the work contributes to the well-being of Aboriginal and Torres Strait Islander communities and complies with AIATSIS' Guidelines for Ethical Research in Australian Indigenous Studies (GERIAS); and
- they can be accommodated in the publications schedule and budget.

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Recent publications include our latest edition of *Land, Rights, Laws: Issues in Native Title*, 'Native Title Anthropology after the Timber Creek Decision' by Pamela Faye McGrath and *Authorisation and decision-making in native title* by Nick Duff.



ABSENT FRIENDS

FOREBEARS AND COLLEAGUES IN NATIVE TITLE ANTHROPOLOGY

DR JULIE FINLAYSON CENTRE FOR NATIVE TITLE ANTHROPOLOGY AUSTRALIAN NATIONAL UNIVERSITY

**A complete version of this article was first presented to the Federal Court of Australia and National Native Title Tribunal's 25 Years of Native Title Anthropology: A tribute to the contribution of anthropologists to the development of Australian native title law, Duxton Hotel, Perth, 10 February 2017.*

IN THIS ARTICLE I WANT TO BRIEFLY trace the early years of anthropological involvement with native title, our responses, and future challenges. In celebrating 25 years of anthropology's contribution to native title law it is an opportunity to acknowledge a generation of our intellectual forebears in native title anthropology. It is also an opportunity to acknowledge the rise of in-house anthropologists, those we might consider the 'second generation' of native title researchers and beneficiaries of the first wave practitioners.

When the *Native Title Act 1993* (Cth) was introduced in 1993, anthropologists faced challenges for which there were few existing precedents. The Act required new forms of inquiry with the imperative to understand and engage with legal culture and legal processes.

In the absence of guiding precedents native title anthropologists turned initially, and understandably, to paradigms familiar from the.

The land rights era was a watershed in Australian Indigenous land research. From the mid-70s to the late 80s, research was prolific; although in some quarters, ambivalence about research undertaken in the context of legislation developed; a tension identified between 'market forces' and the intellectual validity of applied work.

Notwithstanding this angst, the statutory land councils were major employers of anthropologists outside academia. Anthropologists filled in-house staff positions and some advised the Territory Land Commissioner. Funded research made possible the documentation of regional and local cultural heritage, language preservation and community histories. Anthropologists participated in critical policy inquiries and settings around out-stations, community infrastructure, alcohol use, and a raft of now-familiar socio-economic concerns.

The early discussions about best approaches for native title research were thus enthusiastic, and led to publications on the *what*, and *how*, for the new requirements.

From the start, anthropologists at the ANU's Centre for Aboriginal Economic Policy Research (CAEPR) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) played lead roles in supporting discussions on new strategies. Over time, *native title talk* became integral to the Australian Anthropological Society's (AAS) annual conference.

Now it is commonplace to find native title anthropologists working with, and for, Indigenous Australians through the academia, in land councils and native title organisations, in Indigenous cultural heritage, and as independent consultants.

The debates of the 1990s over the intellectual validity of native title anthropology have largely faded. Several factors explain why; the scale of professional employment opportunities, role changes for

institutions administering the native title system, and a continuing demand for anthropological contributions.

Anthropologists now participate in litigation, operating as a 'friend of the court'; they work for the Crown, as well as with claimants. They play important roles in pre-and post-claim determination situations, in claimant dispute management, and in new areas such as assisting prescribed bodies corporate, researching compensation claims and in community development.

Two critical things led to a shift in the legitimacy of native title anthropology.

As I outlined above, native title opened new employment opportunities; but overtime the complexities of claim situations increased and the need for content-specific training followed.

Specific anthropological courses emerged. Peter Sutton and *Anthropos Consulting* ran non-accredited professional development summer schools in the late 1990s early 2000s; while the National Native Title Tribunal (the Tribunal) supported a trial mentoring project linking 6 early career in-house anthropologists in a one-on-one partnership with a senior anthropologist.

Over 8 years, from 2005–12, the University of Western Australia offered Certificate and Diploma level online courses in native title and cultural heritage supported by scholarships from the Tribunal and the Native Title Unit in the WA Premier's Department. Many staff anthropologists in WA are graduates of this - unfortunately now defunct



Left to right: Prof Peter Sutton, the Hon. Justice Michael Barker, the Hon. John Mansfield AM QC and Mr Barry McGuire representing the Wadjuk Noongar.

– program in spite of graduating 50 students over that period.

Other learning opportunities appeared. The Centre for Native Title Anthropology originated from an idea proposed by native title anthropologists Bill Kruse, Pam McGrath and Jodi Neale, and championed by Nic Peterson through the Australian National University. Deane Fergie and colleagues at Adelaide University ran native title courses and projects through Australian Native Title Studies, while James Cook University of Cairns offered a week-long residential Master's Course.

Many of these later initiatives were funded by the Attorney General's Native Title Anthropologist Grants Program.

Twenty five years after the beginning of native title anthropology, the landscape for anthropologists continues to see a strong market demand for knowledge and skills, no less because of Federal Court involvement.

In celebrating 25 years in the relationship between anthropology and native title law, a major cultural challenge identified early by our forebears remains - that of enabling and enhancing anthropologists to effectively work with legal processes.



John Lyne and Dr Julie Finlayson.



Dr Julie Finlayson addressing the conference.

Photos taken at the Federal Court of Australia and National Native Title Tribunal's 25 Years of Native Title Anthropology: A tribute to the contribution of anthropologists to the development of Australian native title law, Duxton Hotel, Perth, 10 February 2017. Credit: National Native Title Tribunal.

Current Projects



NATIVE TITLE PRECEDENTS DATABASE

The major output of the Native Title Representative Bodies Knowledge Management Project is the Native Title Precedents Database. It is Australia's only national database for Native Title Representative Bodies and Native Title Service Providers (NTRB/NTSPs). Its secure environment allows each organisation to share agreements, legal advices, court documents and other resources confidentially.

If you would like to know more about the database, please contact:
Stacey Little – precedents.database@aiatsis.gov.au or 02 6261 4227



PBC CAPABILITY PROJECT

The Prescribed Bodies Corporate (PBC) Capability Project is a collation and analysis publicly available and organisational data about the current size, function, operational and economic capacity of PBCs and RNTBCs around Australia and the Torres Strait Islands to develop a long-term picture of the patterns, trends and changes across the PBC sector to better inform native title organisations and provide policy advice.

Would you like to be involved in this project?

For further information about the PBC Capability Project please contact:
Dr Belinda Burbidge – belinda.burbidge@aiatsis.gov.au or 02 6261 4226



UNDERSTANDING NATIVE TITLE ECONOMIES

This project is about understanding the type and amount of work done by Indigenous members of native title claims and Prescribed Bodies Corporate (PBCs). The project is a way of tracking Indigenous work and how community members value the work involved in obtaining and exercising their native title rights and interests.

Want to be involved as a project partner?

For further information about the Understanding Native Title Economies project please contact:
Bhiamie Eckford-Williamson – bhiamie.williamson@aiatsis.gov.au or 02 6246 1134



MANAGING INFORMATION IN NATIVE TITLE (MINT)

The MINT project investigates the challenges of culturally appropriate management, storage, use and return of native title materials. The project team are currently drafting national guidelines and exploring options for a case study with a NNTRB/NTSP and PBC.

Is your organisation in the process of or thinking about handing back native title materials to community?

If so, please contact:
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