



AIATSIS

Native Title **NEWSLETTER**

Issue 2 | 2021



WELCOME

to the Native Title Newsletter Issue 2, 2021



For the past 28 Years, the AIATSIS Native Title Research Unit (NTRU) has focused on maximising the recognition of native title through improving information and coordination, actively engaging in law and policy reform and strengthening the voice of native title holders.

Over two editions each year, the Native Title Newsletter includes feature articles, community interviews, book reviews, research project reports, youth perspectives and other various articles.

Despite the changes to our lives and work brought about by the COVID-19 pandemic,

in this edition we pay attention to how Aboriginal and Torres Strait Islander people are interacting with native title while innovating and leading in the research arena.

The progress of native title claims across Australia is shown through the 2021 Native Title Snapshot, and we reflect on the shared experiences of coastal First Nations' Peoples from around the world.

We explore the findings of the 2021 Native Title Report from the Australian Human Rights Commission and look at the AIATSIS Summit 2021 retrospective. Indigenous led and focussed research is firmly in the spotlight with the

announcement of the round 2 grant recipients supported through the Indigenous Research Fund.

Stay in the loop by [subscribing to the online Newsletter](#). If you would like to make a contribution, please contact us at ntru@aiatsis.gov.au

Above: A flock of birds tracking down Kianga Lake at low tide, Yuin Country (South Coast, NSW), 2021. Photo: Dora Bowles

Cover: The remnants of high tide draped from low-hanging branches, Kianga Lake on Yuin Country (South Coast, NSW), 2021. Photo: Dora Bowles

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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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Native Title Snapshot 2021

AIATSIS

The courts reached native title determination outcomes slowly in the beginning and with changes to legislation, policy and practice some of the impediments were removed and positive determinations increased. As at 1 October 2021, there were 442 positive determinations over 3,221,270 km² of land and waters in Australia.

In 1997, five years after the Mabo decision the first Registered

Native Title Body Corporate, also known as a Prescribed Body Corporate (PBC), was registered. Ten years later in 2007, and almost 15 years after the Mabo decision, the number of registered PBCs increased to 52. The number has climbed to 232 PBCs registered by October 2021. Some PBCs have achieved more than one determination and some claims groups are yet to nominate their PBC to the National Native Title Tribunal (NNTT).

Native title at a glance

Each year NTRU compiles native title determination information from the National Native Title Tribunal's register. This information provides you with a snapshot of how many native title determinations there are to date. It also displays how much of Australia's land and waters have been successfully determined to be native title land.

NEW SOUTH WALES

There have been 17 positive determinations in NSW.

How much of NSW is under native title?

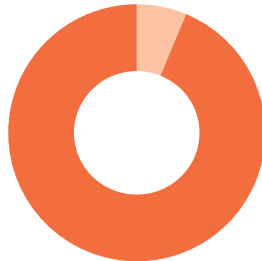


■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

VICTORIA

There have been 4 positive determinations in VIC.

How much of VIC is under native title?



■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

WESTERN AUSTRALIA

There have been 3 positive determinations in WA.

How much of WA is under native title?

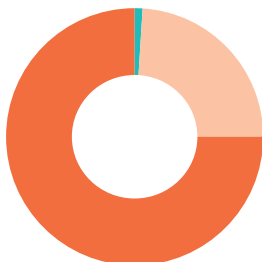


■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

NORTHERN TERRITORY

There have been 119 positive determinations in NT.

How much of NT is under native title?

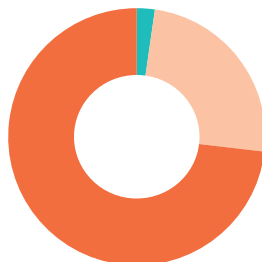


■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

QUEENSLAND

There have been 147 positive determinations in QLD.

How much of QLD is under native title?

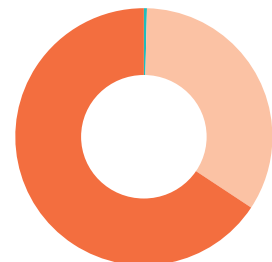


■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

SOUTH AUSTRALIA

There have been 32 positive determinations in SA.

How much of SA is under native title?

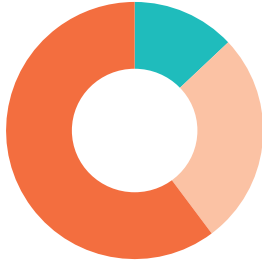


■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

NATIONAL

There have been 442 positive determinations nationally.

How much Nationally is under native title?



■ Exclusive native title
 ■ Non-exclusive native title
■ Land and waters not under native title

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.

Year	Percentage of Australia under native title
2000	-
2005	7.9%
2010	12.6%
2018	35%
2019	37%
2020	39.2%
2021	39.8%

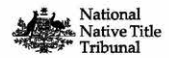
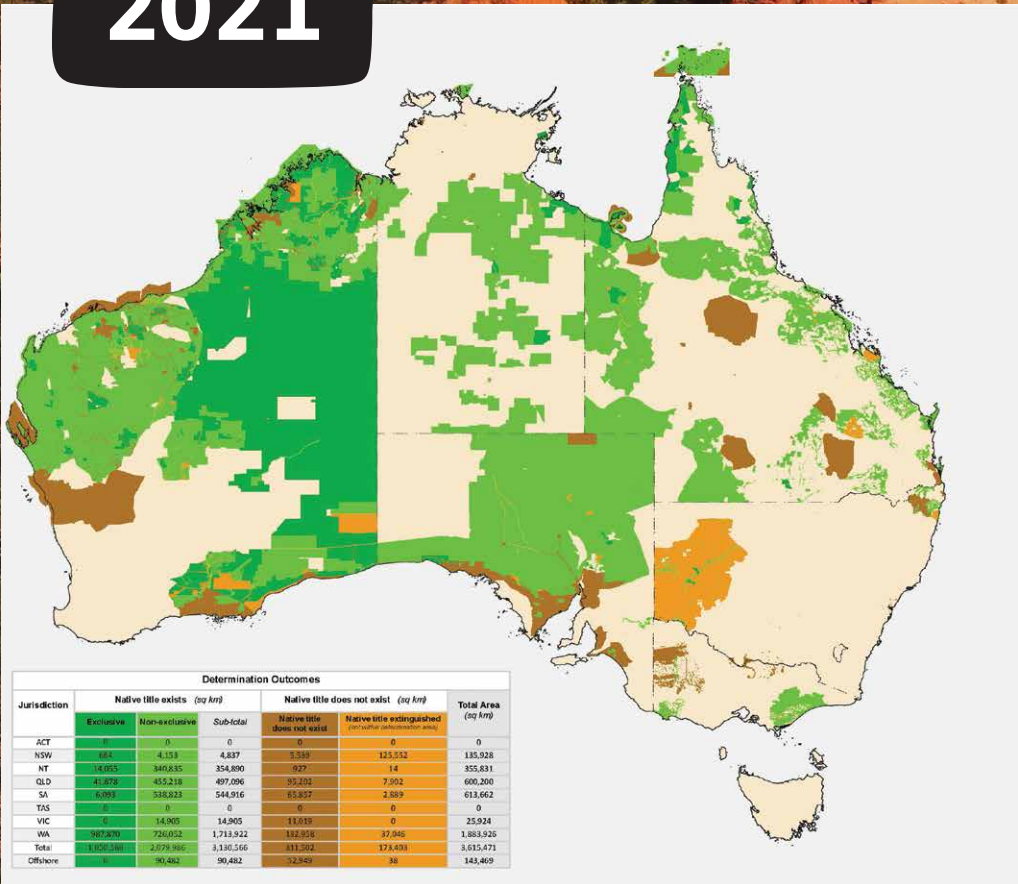
This data is current as at 15 October 2021. Land and water data is from Geoscience Australia: <https://www.ga.gov.au/scientific-topics/national-location-information/dimensions/area-of-australia-states-and-territories>



Bigambul Country, 2019. Photo: AIATSIS

How much of Australia IS NATIVE TITLE

2021



Native Title Determinations

As at 1 July 2021

Determined Outcomes

- Native title exists (exclusive)
- Native title exists (non-exclusive)
- Native title does not exist
- Native title extinguished (Not within determination area)

Prepared by:
Geospatial Services, National Native Title Tribunal, 20/07/2021

Some or parts of some determinations may not yet be in effect or on the National Native Title Register (NNTT). The court may decide that the determination of native title will take effect conditional upon some future event occurring, for example, the registration of an Indigenous Land Use Agreement or the establishment and registration of a prescribed body corporate (PBC). In these cases the determination, or relevant part, will not be registered on the NNTT until the condition has been met.

Spatial data sourced from and used with permission of:
Landgate (WA), Dept of Resource (QLD) © The State of Queensland, Land & Property Information (NSW), Dept of Infrastructure, Planning & Logistics (NT), Dept of Planning, Transport & Infrastructure (SA), Dept of Environment, Land, Water & Planning (VIC), and Geoscience Australia, Australian Government. Reference to ACT also includes Jervis Bay Territory. © Commonwealth of Australia.

Areas have been calculated in square kilometres using Australian Albers projection (GDA2020).

With the exception of the Commonwealth, Coat of Arms and where otherwise noted, this map is provided under a Creative Commons Attribution 4.0 International License: <https://creativecommons.org/licenses/by/4.0/>

While the National Native Title Tribunal (NNTT) and the Native Title Registrar (Registrar) have exercised due care in ensuring the accuracy of the information provided, it is provided for general information only and on the understanding that neither the NNTT, the Registrar nor the Commonwealth of Australia is providing professional advice. Appropriate professional advice relevant to your circumstances should be sought rather than relying on the information provided. In addition, you must exercise your own judgment and carefully evaluate the information provided for accuracy, currency, completeness and relevance for the purpose for which it is to be used. The information provided is often supplied by, or based on, data and information from external sources, therefore the NNTT and Registrar cannot guarantee that the information is accurate or up-to-date. The NNTT and Registrar expressly disclaim any liability arising from the use of this information. This information should not be relied upon in relation to any matters associated with cultural heritage.

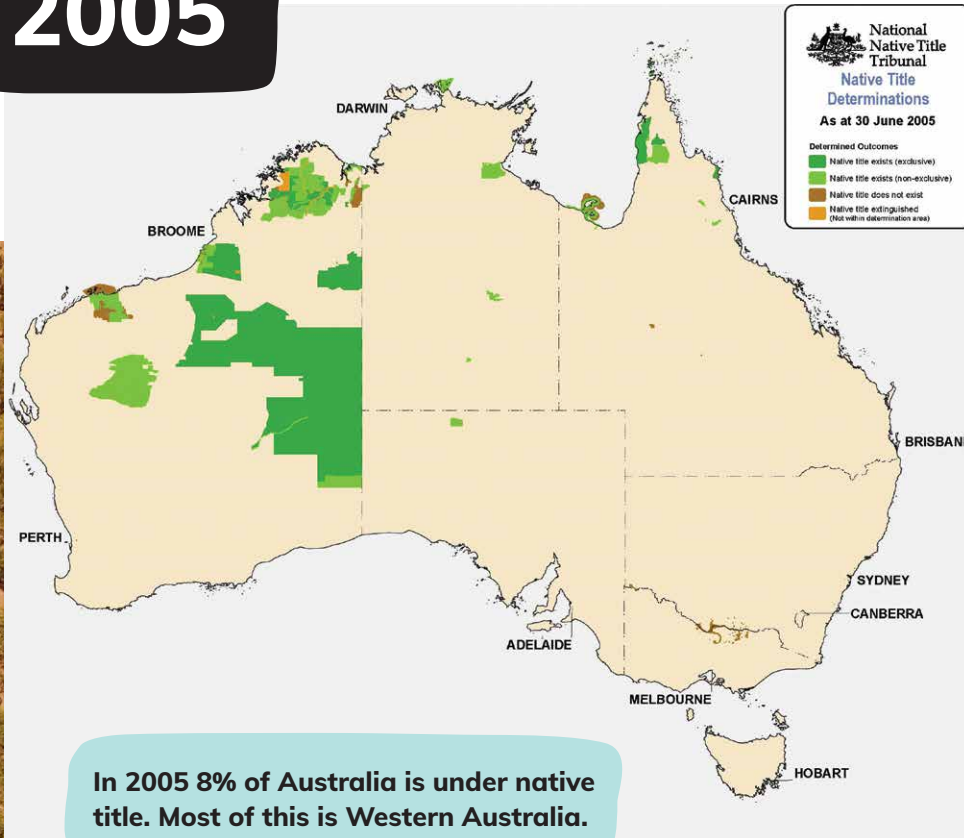
Jurisdiction	Determination Outcomes					Total Area (sq km)
	Native title exists (sq km)			Native title does not exist (sq km)		
	Exclusive	Non-exclusive	Sub-total	Native title does not exist	Native title extinguished (not within determination area)	
ACT	0	0	0	0	0	0
NSW	661	4,133	4,837	3,238	123,332	131,408
NT	14,955	340,835	354,890	927	14	355,831
QLD	41,872	455,218	497,096	39,203	7,392	600,200
SA	6,393	338,823	344,916	85,827	2,889	613,662
TAS	0	0	0	0	0	0
VIC	0	14,905	14,905	11,919	0	25,924
WA	387,576	726,052	1,113,922	182,356	37,066	1,883,326
Total	3,105,374	3,079,960	3,130,166	111,303	173,433	3,815,471
Offshore	0	90,482	90,482	12,843	38	143,469

As of October 2021, 39.8% of Australia's land mass is covered by native title.

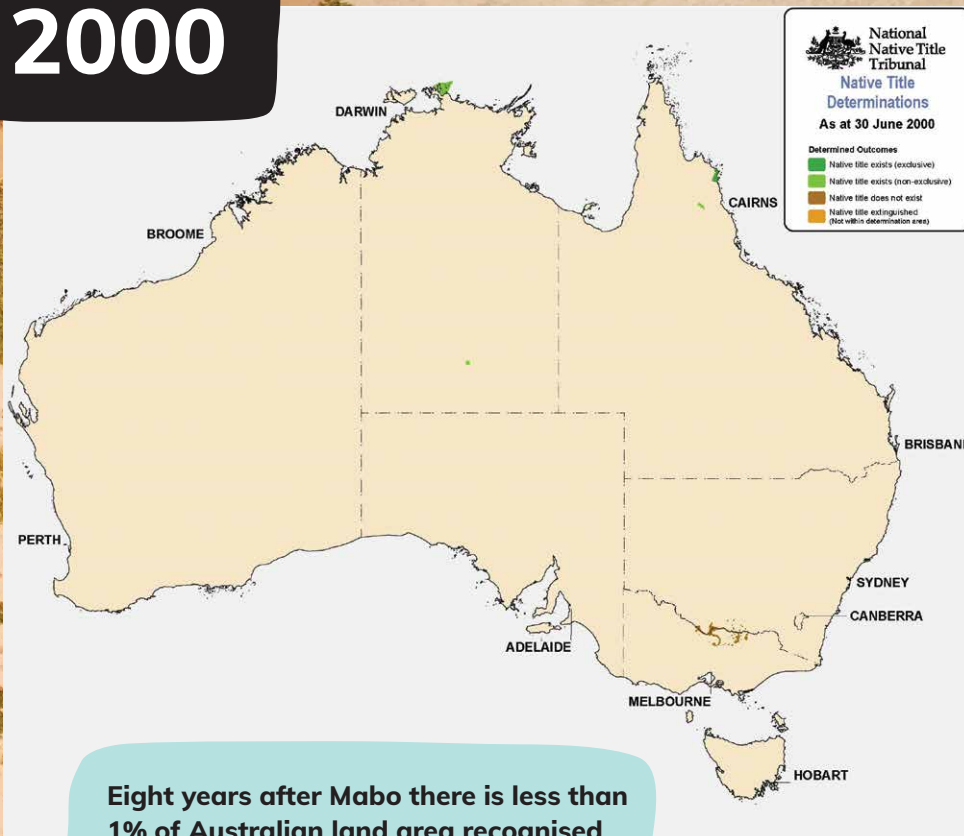
The Native Title Snapshot, Issue 2, 2020, contained an error. Correction: In 2020, there were positive determinations over 3,105,374 km² of land and waters in Australia.

Maps reproduced with the kind permission of the National Native Title Tribunal.

2005



2000



Coastal communities and self-determination: shared experiences from Chile and Panama to Australia

Mia Stone, AIATSIS and Jeremy Anbleyth-Evans¹

Indigenous coastal communities across the world have strong connections to their waters and Sea Country.² Despite this, many communities have little say in the management of their resources. Commercial overfishing, unsustainable aquaculture, farming practices and other industrial activities as well as climate change, have damaged and degraded Sea Country.³ In some instances, these places are no longer healthy enough to support the long-term needs and aspirations of Indigenous Peoples. In addition, state-driven attempts at conservation have too often disregarded the voices and needs of Indigenous Peoples and ethnic minorities, excluding communities from management frameworks and criminalising customary fishing practices.⁴

Despite different contexts, histories and legislative and policy frameworks, coastal Indigenous communities from Chile, Panama and Australia are experiencing similar challenges, frustrations and aspirations.

At an online seminar on 25 March 2021, a small group of coastal Peoples from across Australia and Latin America came together to explore these connections. The seminar was facilitated by AIATSIS and the University of Los Lagos in Chile. Speakers included Wally Stewart and Robert Chewying from the NSW Aboriginal Fishing Rights Group, Yohana Coñuecar-Llancapani of the

Mapuche Huichille community in Chile and Arcadio Castillo from Guna Yala, Panama.

Of the many connections discovered, several stood out. All speakers spoke of the significance of cultural fishing for their culture, livelihoods and sustenance, and the desire for greater control over the management of their Sea Country. Communities also shared strategies for Indigenous-led science to combat environmental threats to their waters.

The deep connection to Sea Country expressed by all participants was aptly articulated by Yohana through the Mapuche concept of *kume mogen* or 'good living', which she described as the interconnectedness of all coastal communities and the need to live in harmony with its *intofil mogen* ('sacred local biodiversity').⁵ She spoke of her people as the custodians and heirs of Sea Country, passed from generation to generation. Arcadio expressed similar ideas when he said:

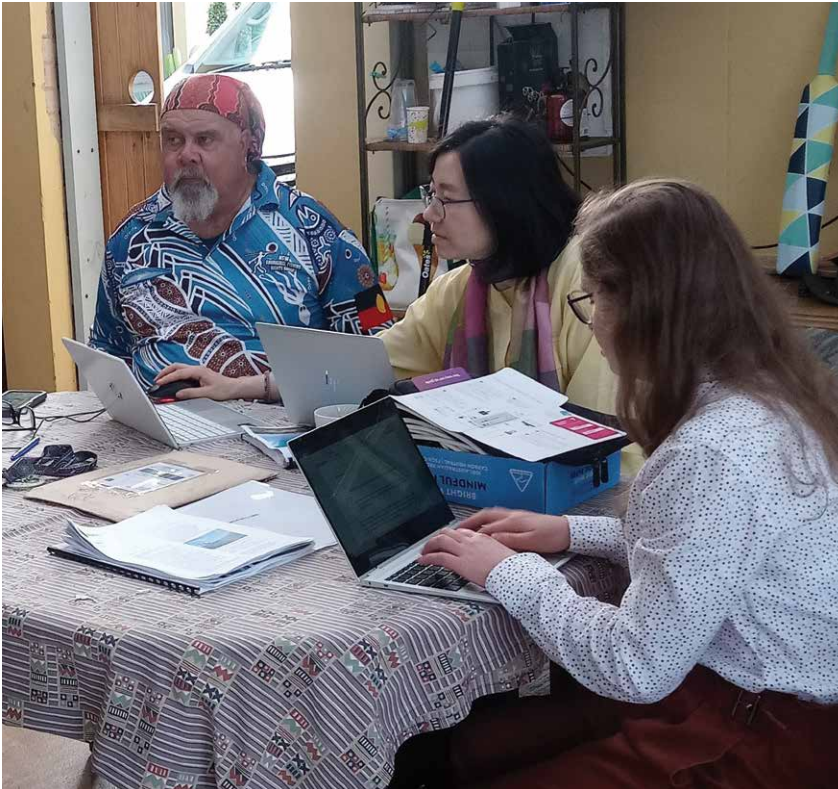
The Earth and the Sea have always been present in the material and spiritual life of the First Nations. Our *Nabgwana* is Mother Earth/forest and *Balungunsob/Muu Billi* the sea.

However, all communities had faced barriers to accessing Sea Country and practicing their culture. Wally and Rob shared their community's experiences

of prosecution under NSW fishing legislation for accessing traditional resources. Although protections exist under native title law,⁶ they can be hard to enforce and are often disputed in court. In addition, these rights are construed as being limited to 'personal and domestic' uses,⁷ which prevents Traditional Owners from cultural-commercial fishing for the economic development of their communities.

Similar frustrations were felt in Chile where the *General Law of Fishing and Aquaculture* (which establishes a quota system for the use of marine resources) largely ignores Indigenous Peoples.⁸ The Mapuche Huichille community are currently in the process of securing an *Espacio Costero Marino de Pueblo Originario (ECMPO)* (Indigenous Marine Area), designed to recognise and protect the rights of Indigenous coastal communities.⁹ However, the process has been lengthy, running now for over 10 years. The law has also been criticised for the complexity and bureaucracy involved in establishing an ECMPO, a lack of criteria for evaluating applications¹⁰ and ambiguities around implementation.¹¹ As with native title, an ECMPO can only be established if there are no inconsistent third party rights over the area.¹²

External environmental threats were another common challenge. Arcadio of Guna Yala spoke of significant impacts on biodiversity and reef health



Left to right: Wally Stewart, Tran Tran (AIATSIS) and Mia Stone (AIATSIS), South Coast NSW, 2021. Photo: supplied by Robert Chewyng

as a result of climate change, tourism and commercial trawling, despite the region enjoying relatively strong self-governance as an autonomous province since 1938, and the revolution of 1925.

Ending on an optimistic note, Wally and Rob spoke passionately about the need for 'black science' to drive solutions, and shared their experiences of Indigenous-led sea urchin eradication.¹³ In addition, Yohana expressed optimism that a new constitution in Chile would pave the way for greater recognition of Indigenous rights:

Chilean Indigenous Peoples have a long history of discrimination and denial of territorial rights, both over the land and sea. Today we are in a transitional process for a new relationship with Indigenous Peoples through a new constitution where it is expected that a plurinational, multicultural

and democratic state will be recognised. We hope this new constitution will recognise our rights over land and sea and our ways of organising under the concept of *kume mogen*.

The experience was an invaluable opportunity to learn from one another, share best practice and gain support for the realisation of Indigenous rights and interests over the sea. Attendees expressed a strong desire to continue working together to build solidarity and share solutions.

¹ Mia Stone, AIATSIS. Jeremy Anbleyth-Evans is completing his postdoctoral Research Fellowship at the University of Los Lagos, Chile. He is a marine geographer and anthropologist with research interests in aquaculture, conservation and Indigenous rights.

² Luke Smyth, Hayley Egan and Rod Kennett, *Livelihood Values of Indigenous Customary Fishing: Final Report to the Fisheries Research and Development Corporation* (Report, Australian Institute of

Aboriginal and Torres Strait Islander Studies, November 2018) iii.

- ³ Jeremy Anbleyth-Evans et al., 'Toward Marine Democracy in Chile: Examining Aquaculture Ecological Impacts through Common Property Local Ecological Knowledge' (2020) 113 *Marine Policy* 1.
- ⁴ Luke Smyth, Hayley Egan and Rod Kennett, *Livelihood Values of Indigenous Customary Fishing: Final Report to the Fisheries Research and Development Corporation* (Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, November 2018).
- ⁵ For more on *kume mogen*, see Juan Ñanculef Huaiquino, *Tayiñ Mapuche Kimün: Epistemología Mapuche – Sabiduría y Conocimientos* (Universidad de Chile, 2016).
- ⁶ See Native Title Act 1993 (Cth) s 211.
- ⁷ See, eg, *Foster on behalf of the Gunggari People (No 3) v Queensland* [2014] FCA 1318.
- ⁸ Gissi, Nicolás, Danila Ibacache, Bernardo Pardo, and Ma. Cristina Ñancuqueo. 'El Estado chileno, los *lafkenche* y la Ley 20.249: ¿Indigenismo o política del reconocimiento?' *Revista Austral de Ciencias Sociales*, no. 32 (2017): 5–21.
- ⁹ Jeremy Anbleyth-Evans et al., 'Enhancing Bio-cultural Management in Indigenous Marine Areas in Chile' (In Press) *Environmental Management*.
- ¹⁰ Matías Meza-Lopehandía, 'La Ley Lafkenche: Análisis y perspectivas a 10 años de su entrada en vigor', *Parliamentary Technical Advice*, June 2018. These issues have come before the courts. See, e.g. *Comunidad Mapuche Huilliche Chona PU WAPI contra Comisión Regional de Uso de Borde Costero de la Región de Aysén*, Corte Suprema, Rol N° 803-2018, 8 October 2018.
- ¹¹ Gissi, Nicolás, Danila Ibacache, Bernardo Pardo, and Ma. Cristina Ñancuqueo. 'El Estado chileno, los *lafkenche* y la Ley 20.249: ¿Indigenismo o política del reconocimiento?' *Revista Austral de Ciencias Sociales*, no. 32 (2017): 14.
- ¹² Law No. 20.249 (Chile) art 7.
- ¹³ For more information about the project, see AIATSIS, 'Livelihood Values of Indigenous Customary Fishing' (Web Page) <https://aiatsis.gov.au/research/current-projects/livelihood-values-indigenous-customary-fishing>.

The impact of the pandemic on native title proceedings

Kieren Murray, Wiradjuri, AIATSIS

When the COVID-19 pandemic hit and inevitable lockdowns began to occur, the Australian court system had to respond with a set of measures to ensure the justice system continued to operate. In response to the pandemic, implementation of Zoom courtrooms, remote hearings, and restrictions on free movement have had a series of implications on the native title process. From difficulties procuring evidence, to constantly shifting hearing dates, the ongoing pandemic has largely stalled what is a very hands-on area of law. Parties and Courts have had to come up with new ways of working on the run to ensure matters that had already begun, continued in the face of these difficulties and a number of recent judgments reflect these challenges.

Like most public venues, in January this year QR Codes were introduced into all Federal Court buildings as restrictions began to ease on public gatherings. Prior to that, all courts were dealing with the difficulties associated with remote hearings, and in New South Wales and Victoria most notably, restrictions were reintroduced later in 2021. For Queensland, South Australia, Western Australia and the Northern Territory, low to non-existent infection rates have seen a return to a relatively normal existence. The vast majority of native title claims currently being heard are in those jurisdictions.

However, with the majority of the Country grappling with the constraints of the pandemic throughout 2020, participants in the court system had to come up with a series of work-arounds to ensure hearings could still go ahead.

From difficulties procuring evidence, to constantly shifting hearing dates, the ongoing pandemic has largely stalled what is a very hands-on area of law.

The Federal Court of Australia in *Alvoen on behalf of the Wakaman People #5 v State of Queensland (No 2)* [2020] FCA 960 ('Alvoen') explicitly dealt with a matter concerning the remote delivery of evidence. The case concerned an elderly witness who was scheduled to give evidence supporting the claim but belonged to an at risk category due to age and health. The witness's age also meant delivery of his evidence was of high priority and could not be delayed. A dispute between NQLC lawyers and counsel acting for various respondents arose as to the presence of lawyers when the relevant witness was giving evidence via Microsoft Teams. Ultimately it was decided that the lawyers would have to be present to provide the technology required for evidence to be given and assist with other technical requirements.

The vocabulary used with respect to the matter heard in *Alvoen* is an entirely new way of phrasing for the Australian judicial system. As the pandemic draws to a close through the back end of 2021 thanks to an increasing uptake in vaccinations, it seems that things will return to normal for the courts in the native title space. Whether practices like the one discussed above become common-place is yet to be known, but the capacity to do so offers the legal system an extra mechanism that may have previously been under-utilised if non-existent. The integration of technology into the legal profession, has been notoriously slow, so the necessity imposed by the pandemic may have sped up an inevitable adoption process. Credit should be forwarded to parties in cases such as those mentioned above for adapting to the difficult situation and ensuring matters were still heard in good time.



Quandamooka Country, Minjerribah (North Stradbroke Island), 2021. Photo: AIATSIS



Native title project – update from Aboriginal and Torres Strait Islander Social Justice Commissioner

June Oscar, AO, Bunuba

As I work from Bunuba country in this difficult and worrying time, I am grateful for the opportunity to publicly thank all the women who have contributed so far to my native title project. I am also grateful to have this space to update those interested regarding progress and emerging themes.

Many of you will know that, for around a year, I have been receiving surveys and submissions from people across the country on their experience of the native title system. For the last few months, my team has also been conducting in-depth interviews with First Nations women who have extensive lived experience in this area, and whose contributions are making a real difference to their country and their people. The scope of

the project and the approaches available to us have been limited because of Covid. We haven't been able to travel to meet women face-to-face, let alone share a cuppa and a biscuit. But the interviews have yielded such valuable information. And we still have a few to go.

I also had the privilege of running a workshop exclusively for First Nations women at the AIATSIS Conference earlier this year and facilitated a discussion on the native title system, which has been invaluable to my team's work on this project.

And the contributions started with the voices of the women and girls, which includes Chapter 11: Land and Country.

My Native Title Report will take the form of stories – First Nations

women's stories of their experiences in the native title system. I want to complement my report *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future 2020* by further elevating the voices of women, specifically in the native title context. The Report will focus on lived experience of the native title system; I want to paint a picture of the way the system plays out in real life. I want to highlight the diverse strengths that women bring to this space and the way in which the work they have been doing can be supported into the future. I hope that the stories will make it clear that the technical problems we know about through so many inquiries and reviews are more than that – they are urgent, tangible

problems faced on a daily basis by First Nations peoples trying to protect country, culture and communities.

Readers might be interested to hear some of the themes that have emerged so far from submissions and interviews. While each community and native title group is unique with its own strengths and challenges, there are also common themes. The following list does not come close to the depth and breadth of knowledge and experience that we received from the many generous women, but it gives an idea of what has been touched upon.

- We heard of so much **positive and creative work being done** by First Nations women and our communities more generally to deal with and work around the challenges posed by the native title system. For example, communities are implementing their own **culture-based programs** to address disputes exacerbated or created by the native title system. **Cultural and kinship mapping projects** are proving invaluable in communities across Australia, easing tensions and disputes about identity and ensuring the right people speak for country. We heard simple but strikingly effective ideas about **infusing the native title process** with our own culture and our own meaning – ways for groups to re-focus on who we are, what is important to us and what we want from this system.
- We heard how **networking and knowledge sharing** in the native title system is key to effective and efficient creation and tailoring of ‘solutions’ across different communities. However, there is no resourcing of knowledge sharing in this way other than by individual organisations and communities on an ad hoc basis. Centralised capacity provided expressly for this purpose would make a huge practical difference.
- We heard from and about many First Nations women who fulfill **a crucial leadership role** for their communities in the native title context. The capacity to navigate what is a very complex context involves a unique skillset based on technical skills, experience and cultural knowledge. The burden on and self-sacrifice required of the few people who have this skillset is immense.
- Women reported that the very **high volume of unpaid labour** that First Nations people are doing within the native title system is unreasonable, unsustainable and unjust. The injustice was most stark where others in the system are profiting gainfully.
- Many native title groups and Traditional Owners are grappling with the **interaction between various different pieces of legislation**, for example, heritage protection legislation and state/territory land rights acts. The interactions can be disempowering and fail to protect the rights of Traditional Owners to speak for or benefit from their own country.
- Many women told us of problems regarding **transparency, accountability and communication with their Representative Bodies and Service Providers**.
- We heard concerns about **the lack of choice around which lawyers and anthropologists** are appointed to provide services to native title groups. We heard that some representative bodies make these decisions without consultation and that they often represent conflicting parties.
- We heard that the **funding arrangements** through Representative Bodies and Service Providers involve **conflicts of interest** and often result in some groups, and some individuals and/or families within broader groups, being without legal representation and anthropological support for their claims. The funding system and the way it is implemented was discussed as one way in which unfair power dynamics are created and/or perpetuated within native title groups.
- We heard stories of people and families who have been excluded from native title claims due to **anthropological discrepancies** or limitations in ‘scope’ of the funded anthropologist. Some women reported that inaccurate documentary evidence was privileged over knowledge of local First Nations families.
- We heard about a lack of appropriate **dispute resolution** for conflict around inclusion and exclusion in native title claims.
- Women told us about a **cumulative gender-based process of exclusion** in the native title system, for example, how sacred women’s sites like birthing sites were not disclosed



2021 AIATSIS Summit women's leadership workshop participants, Kaurna Country June, 2021. Photos: AIATSIS

during their claims process because the anthropologist was male, leading to women not being consulted regarding ILUAs involving the relevant sites. In one case, this led to the destruction of a birthing site.

- Women described pain, frustration and disempowerment at the **lack of ownership of anthropological reports** using their personal information, and a lack of transparency and accountability surrounding the use of those reports and who has access to them.
- We heard about the pervasive lack of understanding across some communities regarding how PBCs operate and make decisions.
- We heard that **ORIC** does not appear to be appropriately structured or resourced to address disputes regarding PBCs in a timely or effective way and the fallout in communities is significant.
- There are still some communities around the country where women are not equally respected in the native title space. Sometimes

'tradition' or 'culture' is used to try and prevent women from participating equally in decision-making.

- We heard that the **set-up of PBCs** and their constitutions and rule books is inconsistent. We heard from many women about the difficulties they faced trying to improve PBC governance procedures in the face of inadequately considered rulebooks and constitutions.
- We heard stories of groups which have found and are finding ways to protect country and culture without native title, using other legislative regimes or good-will negotiations. We heard about how some groups are achieving beneficial agreements, which respect their free, prior and informed consent, with large mining companies and governments despite the odds being firmly against them. However, many groups are not managing this and are simply grossly out-powered.
- The consistent theme above all else was one of persistence, determination,

resilience and strength, in the face of overwhelming and constant obstacles. First Nations women in the native title space are providing crucial leadership, technical expertise and cultural knowledge and respect to come up with creative, culturally appropriate and therefore effective practical ways to try and make native title work for us.

My Native Title Report will be published next year. Our women's stories will provide a new type of clarity around the reforms needed to the native title system – holistic reforms which consider the many ways in which native title impacts our lives. The stories that will make up the Native Title Report will contribute significantly to the large scale structural change envisioned in *Wiyi Yani U Thangani*. They will also stand alone as a reflection on the need to refocus ourselves on what we want from native title, how we can achieve that, and the role that government, policy makers, professionals in the system and others can play in helping us get there. I look forward to sharing it in full.

Decision-making guides for RNTBCs

Toni Bauman and Christiane Keller, AIATSIS

Effective decision-making is essential to strong governance. It can go a long way to reducing the negative impacts of disputes. Registered Native Title Bodies Corporate (RNTBCs) and their staff and members occupy a legally complex decision-making space in holding and managing native title rights and interests. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) is providing advice and a template on how to develop a decision-making guide for your corporation.

In 2018, AIATSIS and the Taungurung Clans Aboriginal Corporations (TCAC, now Taungurung Land and Waters Council (TLaWC)), developed the Taungurung decision-making guide for their directors and members who are the Traditional Owners of Country in Central Victoria. This tailor-made guide considers decision-making issues and responsibilities under the *Traditional Owner Settlement Act 2010* (Vic) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act).

In evaluating the Taungurung decision-making guides TLaWC CEO Matt Burns praised them as

'...a resounding success. They are posted on the TLaWC website, available at every TLaWC board meeting and regularly used and referred to in difficult discussions. They are regarded as something of genuine value in guiding corporation decisions and as a product of which TLaWC can be proud.'

Taungurung people wanted the guide to be of use to other Indigenous corporations including RNTBCs. In 2021, a revised draft guide was partly trialled with Barengi Gadjin Land Council Aboriginal Corporation RNTBC to begin to tailor the guide to RNTBC decision-making requirements under the *Native Title Act 1993* (Cth) (NTA) including recent amendments and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth). A draft of the guide was also discussed during the AIATSIS Summit in Adelaide in June 2021.

Since then, the guide has been subject to comment from a number of experts and is undergoing additional revisions. Ultimately the guide will also have to account for changes to the CATSI Act once the CATSI Act Amendment Bill is passed.

The guide contains practical information on:

- compliance and legal requirements
- decision-making for directors, board, members and common law native title holders
- separation of powers
- conflicts of interest
- cultural governance
- facilitating meetings
- building agreement and dispute management

Ultimately, the process of developing a decision-making guide should be an exercise in supporting a group's cultural priorities, and building governance, capability, relationships and goodwill for the directors, members and staff of corporations. Step-by-step suggestions about how to do this are included in a 'How to develop a decision-making guide' document which accompanies the guide itself.

Once finalised the guides will be available on the [AIATSIS](#) and the [PBC website](#)



Taungurung Decision making guides. Photo: Christiane Keller

Supporting Indigenous led research through the Indigenous Research Exchange

Sally Ward, AIATSIS

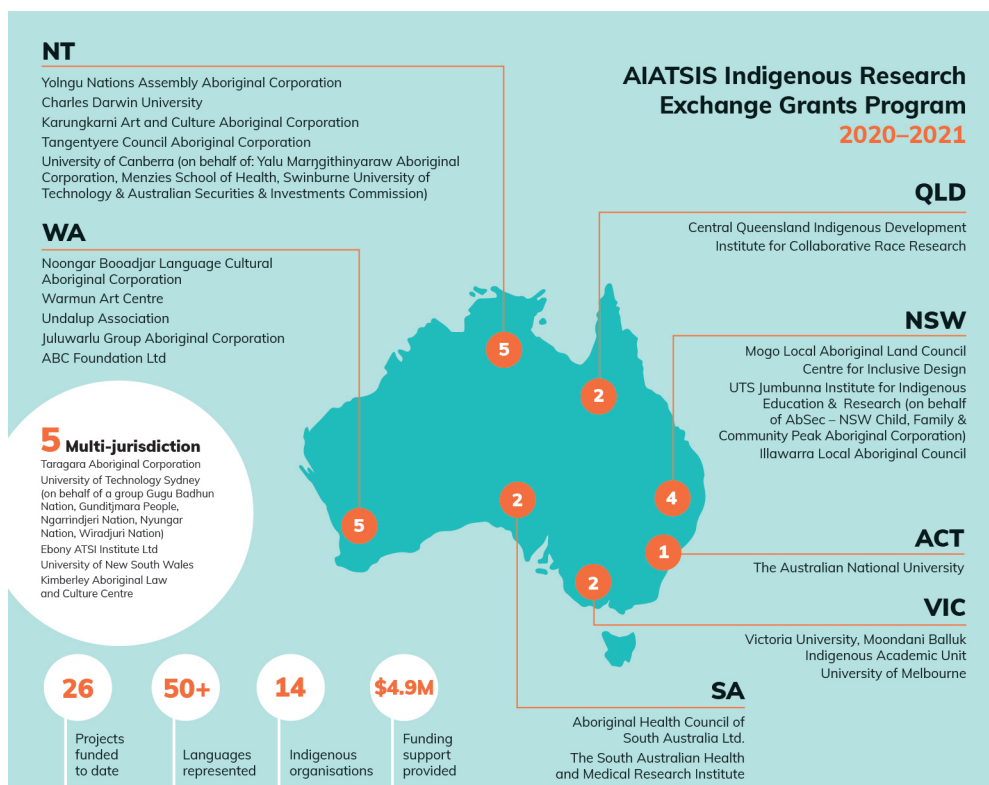
In 2017, the Prime Minister, the Hon. Malcolm Turnbull MP, announced a whole-of-government research and evaluation strategy for policies and programs affecting Aboriginal and Torres Strait Islander Peoples. As part of this announcement, the Australian Government provisioned \$10 million over three years to establish an Indigenous Research Fund. AIATSIS administers this fund, through the Indigenous Research Exchange (the Exchange). The aim of the Exchange is to promote and support the agency of Aboriginal and Torres Strait Islander Peoples in research projects. This improves outcomes in research

translation, utilisation and Indigenous data sovereignty.

The Exchange includes two pillars: a grant program, and a data platform (the Knowledge Exchange Platform). The grant program supports high quality, Indigenous-led research to improve the accessibility and availability of quality robust research and evidence based solutions. The program supports organisations to participate in research activities that will have relevance and impact beyond the community and project. The Knowledge Exchange Platform will provide access to data and information at a local level and provide an evidence base for policy makers to design more effective programs and policies.

To achieve the aim of the Exchange, the following themes have been priority research areas:

1. Valuing Indigenous knowledge and methods
2. Cultural resurgence and resilience
3. Indigenous governance and prosperity
4. Rethinking engagement with governments
5. Opportunities provided by technological change.



The IRX Grants Program supports Indigenous led initiatives across the county.

Since inception, the Exchange grants program has supported 26 Indigenous led projects across the Country. In the most recent tranche of funding, AIATSIS supported the following projects:

The South Australian Health and Medical Research Institute	<p>Insights into supporting the wellbeing of older Aboriginal people</p> <p>What constitutes wellbeing changes over time but remains intrinsic to quality of life. We will explore what sustains the wellbeing of older Aboriginal people experiencing grief, loss and the staff who care for them.</p>
University of Canberra	<p>“Waka Ngurrkanhayngu: Regenerating the existence of life”: Reducing the risk of natural and social disasters reviving and strengthening</p> <p>Indigenous and non-Indigenous Peoples working together two-way to facilitate the remote community Galiwin’ku reviving and strengthening their Yolŋu law, knowledge, culture and governance to heal from and reduce the risk of natural and social disasters.</p>
University of Melbourne	<p>Stigma Stories</p> <p>Working with ILBIJERRI Theatre Company to co-design and evaluate a theatre-based model for sexual health education in Victoria. The project will generate knowledge around community-engaged, participatory approaches to sexual health education for First Nations communities.</p>
Centre for Inclusive Design	<p>Breaking the silence</p> <p>Research into a culturally appropriate, co-designed Artificial Intelligence translation tool for Aboriginal visual (sign) language to English. This will support first contact and communication between mainstream justice/health systems and community.</p>
Taragara Aboriginal Corporation	<p>Mura Maarni: Chasing Mob through the Archives</p> <p>Mura Maarni is an oral history and interdisciplinary multimedia research project that focuses on the Mura of the Corner Country now held in collecting institutions such as archives, galleries and museums.</p>
Aboriginal Health Council of South Australia Ltd	<p>Taking the next steps: Informing the transformation of the research sector to respond to Aboriginal research priorities and ways of conducting research</p> <p>Health research contributes to improved quality of life and longevity. We aim to inform sector development to achieve equitable outcomes through Aboriginal-identified research priorities and principles that inform the conduct of research.</p>
University of New South Wales	<p>Embedding Aboriginal and Torres Strait Islander Lived Experience voices in mental health and suicide prevention</p> <p>This project will evaluate the experience of the first cohort of individuals recruited to the Aboriginal and Torres Strait Islander Lived Experience Centre as they are providing input into mental health and suicide prevention initiatives</p>
UTS Jumbunna Institute for Indigenous Education and Research	<p>Setting the foundation for Aboriginal community-led child protection research</p> <p>This project will establish Aboriginal community-based frameworks, mechanisms and capabilities to drive child welfare policy reforms that align to Aboriginal values and aspirations, and build the localised evidence-base for Aboriginal child welfare systems and practice.</p>

<p>Institute for Collaborative Race Research</p>	<p>Still Here: Sovereignty and the Queensland Aboriginal Community Controlled Sector</p> <p>This project explores how the Queensland Aboriginal Community Controlled Organisations support communities, exercise sovereignty, and negotiate with state agencies. ACCO partners will reflect on their struggles and achievements, and identify pathways to policy transformation.</p>
<p>Tangentyere Council Aboriginal Corporation</p>	<p>Local Decision-Making: Priority Setting in the Alice Springs Town Camps</p> <p>Utilising our unique Wellness Framework we review surveys and place-based data from Alice Springs Town Camps, identifying priorities, community-controlled approaches to complex issues, and strategy with the NT Government, improving decision-making resulting in social transformation.</p>
<p>Juluwarlu Group Aboriginal Corporation</p>	<p>Gulumarri Ngaja: All come together</p> <p>The Juluwarlu Group Aboriginal Corporation seeks to capture, evaluate and report on 20 years of continuing innovative generative practices that have sustained Yindjibarndi Law, Knowledge, and Language and Cultural Resilience through contemporary expressions of Yindjibarndi identity.</p>
<p>Karungkarni Art and Culture Aboriginal Corporation</p>	<p>Gurindji Heritage Project/Keeping Place</p> <p>The Gurindji inspired 'Wave Hill Walk-off' was a defining moment for Indigenous recognition in Australia. This project celebrates this by framing a physical and digital heritage project/keeping place meeting Traditional Owners' aspirations.</p>
<p>University of Technology Sydney</p>	<p>Indigenous Governing Authorities — Creating Jurisdictional Space for the Implementation of Indigenous Law</p> <p>This project explores 'statutory authorities' as a possible response to First Nations' need for pluralist governing structures through which they can exercise land jurisdiction, fulfil responsibilities to Country & manage relationships with settler-colonial governments.</p>

For a long time, Aboriginal and Torres Strait Islander Peoples had research done to them, with little or no say about what that research was, or how it was used. The Exchange is an exciting opportunity for Aboriginal and Torres Strait Islander Peoples, organisations and researchers to determine what their research priorities are, how the research is conducted, and to work together to translate research into meaningful, useful and practical information.



Yirrganydji Country, 2021. Photo: Levi Lee



2021 AIATSIS Summit retrospective

AIATSIS

AIATSIS has been organising and hosting the National Native Title Conference every year since 2001. This year for the first time under the moniker of the 2021 AIATSIS Summit, the National Native Title Conference and the National Indigenous Research Conference were combined into one. The Summit was co-convened by AIATSIS and the Kurna Yerta Aboriginal Corporation (KYAC) and South Australia Native Title Services (SANTS) from May 31–4 June, and hosted by the Kurna people on their Country in Adelaide, South Australia.

The Summit theme for 2021 was – *Footprints for the future – Tracking our journey together*. The AIATSIS Summit provides a unique forum for academics, government, native title,

legal experts and community sectors to collaborate in addressing critical and emerging challenges for the native title and research sectors. As well as opportunities to support and strengthen Aboriginal and Torres Strait Islander cultures, knowledge and governance.

The Summit was held in Adelaide Convention Centre, with over 900 delegates attending across five days. The program featured more than one hundred presentations from 226 presenters, about twenty percent presented online, and well over half were Aboriginal and/or Torres Strait Islander people. Of these presentations, there were eight keynote speeches by the Hon Ken Wyatt AM MP, April Lawrie, June Oscar AO, Craig Ritchie, Tony McAvoy SC,

Professor Megan Davis, Marlikka Perdrisat and Professor Daryle Rigney. Gail Mabo provided an introduction to Mabo Day and there were several workshops, including the Indigenous Women's and Men's Talking Circles and a dedicated Youth Forum.

The theme for the first day of the Summit was *Community*. The opening plenary on Day 1 began with a warm Welcome to Country from Rosalind Coleman, Deputy Chair of the Kurna Yerta Aboriginal Corporation, and was accompanied by a cultural performance from the Taikurtinna Dance Group. Reflecting on the day's theme, the Hon Ken Wyatt AM MP, Minister for Indigenous Australians, delivered the Summit's first keynote.

Minister Wyatt outlined recent government initiatives such as the new National Partnership Agreement on Closing the Gap, developments for an Indigenous Voice, funding for the PBC sector, as well as support for the activities of AIATSIS. Chairperson of the South Australian Native Title Services and South Australia's Commissioner for Aboriginal Children and Young People, Mirning and Kokatha woman April Lawrie, followed with a keynote focused on the importance of children and young people, their wellbeing, and particularly the importance of their involvement in native title.

The parallel sessions that followed showcased some of the best in Aboriginal and Torres Strait Islander-led research. Day 1 also showcased new developments in AIATSIS' work, including a packed workshop describing an initiative to report on the Situation and Status of Indigenous Cultures and Heritage, and the first of a series of workshops on the new AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research.

Day 2 – *Truth*, was opened by Bunuba woman June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner, with a powerful speech on 'Truth for Change'. Oscar's keynote emphasised truth telling not as an end in itself, but as a means to structural reform and the incorporation of Indigenous rights, knowledges and lives into the fabric of the nation. Dhunghutti and Biripi man and AIATSIS Chief Executive Officer, Craig Ritchie, followed with his keynote on the 'Spaces in Between', in which he argued that Indigenous people can

draw on their 'liminality' (being between multiple worlds) as a strength.

The Day 2 program built on many of the themes from Day 1. Presentations focused on topics related to children and young people and Aboriginal and Torres Strait Islander wellbeing. Day 2 also saw the beginning of a two-day stream of presentations dedicated to the repatriation and return of Indigenous cultural materials and ancestral remains. The program was rounded out by three workshops, all focusing on significant contemporary Indigenous policy issues: truth telling, women's leadership, and the Indigenous Evaluation Strategy.

The Summit's biggest day, Day 3 – Treaty, began with a traditional smoking ceremony by Ngarrindjeri Elder Uncle Moogy Sumner, on the lawns by the Karrawirra Pari (River Torrens).

Delegates were then moved inside the venue, where they were welcomed to Kurna Country by Jeffrey Newchurch and Rosalind Coleman, Chair and Deputy Chair of the Kurna Yerta Aboriginal Corporation respectively.

Wednesday's plenary address was delivered by Wirdi man Tony McAvoy SC, a barrister and native title lawyer, who spoke about the complexities of treaty and its meaning for Aboriginal and Torres Strait Islander Peoples. He identified two major barriers to treaty-making in Australia: a lack of interest in treaties at the national level; and the absence of a First Nations representative body

at the national level capable of engaging with the government about treaty.

The multidisciplinary program on Day 3 combined research and native title themes. It included presentations on nation building, Indigenous data sovereignty, cultural heritage and native title, as well as the second half of the special presentation stream on repatriation. Day 3 also featured the special day-long Youth Forum – an opportunity for Aboriginal and Torres Strait Islander people under 35 to meet together.

The gala dinner was a showcase event for 720 guests to celebrate the Summit, held on the evening of Wednesday. The event featured special performances by Anangu Pitjantjatjara Yankunytjatjara Law and Culture – Inma Tjukurpa Munu Pakantjaku, led by Murray George, Ellie Lovegrove and Tony and the Sound Factory.

The Day 4 – *Voice*, program was Mabo Day and the plenary session gave prominence to Torres Strait Islander voices and cultures. Ned David, Chair of the Gur A Baradharaw Kod Torres Strait Sea and Land Council, chaired the session, which also featured a performance from Torres Strait Islander dancer Eddie Peters. Gail Mabo followed with inspiring introductory remarks on the legacy of her father, Eddie Koiki Mabo, imploring everyone to listen to the voices of elders. Cobble Cobble woman Professor Megan Davis then delivered the Mabo Lecture, this year focusing on Indigenous constitutional recognition and a voice to Parliament. Davis drew attention to the significance of the sequencing in the Uluru

Statement from the Heart's call for voice, treaty and truth, with the voice providing a platform for truth-telling and treaty making.

Day 4's program included a wide range of fascinating topics, from carbon farming and caring for Country to economic partnerships, governance and commercialising native title. The Indigenous Men's and Women's Talking Circles, traditionally held at every NTC, were also held on Day 4.

On the final day, Day 5 – Country, Ngarrindjeri man Professor Daryle Rigney and Nyikina Warrwa and Wangkumara Barkindji woman Marlikka Perdrisat launched the final day of the Summit with two invigorating keynote addresses regarding the day's theme. Daryle Rigney focused on speaking from and as, rather than to or through Country.

Speaking with critical awareness of the climate crisis we find ourselves in, Marlikka Perdrisat then argued that the assertion of nationhood needs to be on Indigenous terms and recognise the value of Country and First Law.

The Summit concluded with a moving Closing Plenary, which touched strongly on the question of the future and the legacies we create, featuring Tony McAvoy SC, Michelle Deshong, AIATSIS Council Member and Dora Bowles, organiser of the youth forum.

The Closing Plenary was a highly apt reflection of the spirit of the AIATSIS Summit. By creating essential opportunities for generating dialogue and providing support for each other, the Summit became a much appreciated chance to collectively consider our work and mission, and what footprints for the future we leave behind.

Although themes and topics were diverse, the importance of Indigenous Peoples self-determination and ownership of Country and culture underpinned all discussions. The Summit was a fantastic opportunity to showcase and share the diverse approaches that different Aboriginal and Torres Strait Islander Peoples have used to realise cultural, political, social and economic aspirations within significant legislative and policy constraints.



**Kaurna Yerta
Aboriginal Corporation**



Clockwise from left: Yidaki didgeridoo perform at the Summit gala dinner. Seven Sisters song and dance performance by Anangu Pitjantjatjara Yankunytjatjara Law and Culture. Guests at the AIATSIS Summit gala dinner watch Joshua Warrior's stand-up comedy performance. Photos: David Solm



Factors for successful youth engagement in native title

Dora Bowles, Wiradjuri, AIATSIS

Young Aboriginal and Torres Strait Islander people are vitally important to the succession planning for our communities. Young people are a growing demographic with diverse skills, experience and interests which can support and advocate for our communities now and into the future. Increasingly though, young people face challenges in being involved in native title including: reduced capacity to be on Country and commitments to work and education. Understanding effective pathways to involve young people in conversations and planning about native title, has the potential to strengthen communities and bolster Aboriginal and Torres Strait Islander organisations.

The *Indigenous Youth in Governance and Political Processes* project is a collaboration between AIATSIS, Macquarie University and the Australian National University, which began in 2018. It examines how young Aboriginal and Torres Strait Islander people are participating in governance and policy-making. The project sought to explore and identify established examples of how Aboriginal and Torres Strait Islander organisations have successfully engaged young people. AIATSIS completed three case studies with Bigambul Native Title Aboriginal Corporation (BNTAC), Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) and the First Peoples' Assembly

of Victoria (the Assembly). Each case study revealed a different model for youth involvement in governance.

The case studies, though varied, shared clear commonalities. Three areas emerged as factors contributing to the success of youth engagement in governance and political involvement:

1. locally and culturally responsive programs;
2. intra-familial mentorship; and
3. tailored training and educational programs.

Locally and Culturally Responsive Programs

The success of programs to support youth engagement in native title is contingent on the understanding and application of locally grounded and culturally appropriate protocols and strategies. First Peoples' Assembly of Victoria focused their efforts on sporting, cultural, music and arts events to recruit young people to participate in the Victorian treaty negotiations. BNTAC held a youth summit to bring together Bigambul young people as a forum to learn about the native title system and be mentored by Elders in order to later participate in native title governance. On Minjerribah (North Stradbroke Island), the QYAC ranger program harnesses cultural motivators, like connection to Country, as well as paid employment to engage young people and, strengthen culture and customary practice.

Though each approach for getting young people involved is vastly different across the

case studies, they all respond to their local contexts and are underpinned by culturally appropriate strategies. The outcome of this strategy is effective and efficient youth engagement, wherein young people are appropriately supported and prepared for governance on their Country and in their community.

Intra-familial Mentorship

Intra-familial mentorship is a clear contributing factor to increased youth engagement with the native title sector. It was found that those participants who had prior knowledge of native title from senior family members or parents were very engaged. This also illuminates the challenges that young people without intra-familial involvement in native title face. Two strategies may help address this for young people with an interest in native title and community governance. First, actively engaging parents and carers in native title to reinforce intergenerational participation, and second, developing alternate pathways to train and provide opportunities for young people who do not have access to strong intra-familial mentorship.

Tailored Training and Education Programs

Supporting youth engagement in native title requires a tailored educational program that will provide the skills, knowledge and strategies to successfully manage challenges that may arise. For example, through careful consideration by BNTAC, the Bigambul youth summit presented an opportunity for their young people to understand the native title sector and participate in governance

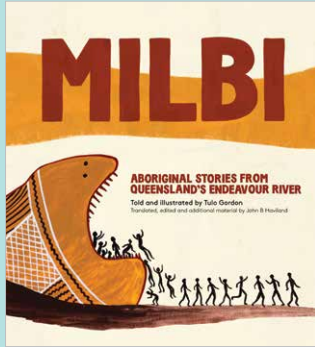
through tailored training. Through the forum, a Bigambul Youth Advisory Council was established so that the young people attending could have formal ongoing influence in the governance of BNTAC. Following the summit, 90% of attendees indicated they would like to participate in future education and training opportunities held by BNTAC. Likewise in Victoria, the development of a one-day 'Aboriginal youth in treaty-making workshop' was essential in fostering a capable and informed cohort of young people to work on the Victorian treaty process. The workshop provided information on treaty process both in Australia and internationally, principles in Indigenous community governance, negotiation skills, and trauma-informed approaches to community engagement. QYAC similarly, provided numerous training and education opportunities for their Ranger program, to support their ongoing employment and understanding of Country.

The *Indigenous Youth in Governance and Political Processes* project shows that locally grounded and culturally appropriate engagement, intra-familial mentoring, and training and education that is tailored to the needs of participants, builds young people's confidence to participate in this space. Having a confident and capable young work force, with the requisite skills and knowledge to participate in native title, community governance and political processes, is highly desirable to ensure positive outcomes across communities, corporations and organisations into the future.



Ngunnawal and Ngambri Country, 2021.
Photo: Dora Bowles

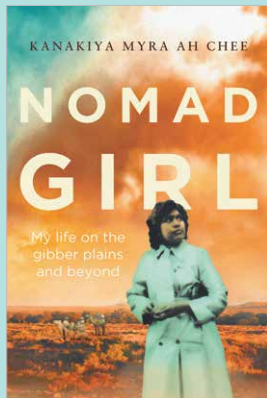
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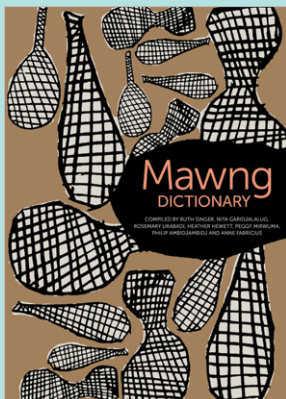


Nomad Girl

My life on the gibber plains and beyond

Kanakiya Myra Ah Chee

'I still remember every detail. Oodnadatta Country – I can still see it, in my mind's eye, exactly as it was back in my time.'



Mawng Dictionary

Compiled by Ruth Singer,
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