



AIATSIS

Native Title **NEWSLETTER**

Issue 2 | 2020



WELCOME

to the Native Title Newsletter 2020



For the past 27 Years, the 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 embracing new opportunities and directions within the native title and research arena.

We explore the opportunities for meaningful collaboration and partnerships in marine estate management and returning native title materials. Indigenous led and focussed research is firmly in the spotlight with the new Code of Ethics for Aboriginal and Torres Strait Islander Research and the Indigenous Research Exchange.

The shifting priorities of post-determination is shown through a review of the last

decade of native title and the 2020 native title snapshot. We continue to support the aspirations of PBCs as they care for country and culture through the newly updated PBC Website.

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: Protestors at the Black Lives Matters rallies in Sydney, 2020. Credit: Ali Mongta
Cover: Neville Bloxsome at Wreck Bay, ACT. Credit: Sharon Bloxsome

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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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AIATSIS building name Maraga celebrates Ngunnawal language



Under the sea: a traditional owner perspective on the Marine Estate Management Act

By Wally Stewart, traditional owner and native title applicant, south coast New South Wales (NSW)

For over 50,000 years Aboriginal people in New South Wales have managed marine resources on their Country. The proper management of the marine resources in our Country is an ongoing cultural obligation we have as traditional owners. Unfortunately these obligations do not always align with compliance and marine regulation regimes.

Co-management of sea country and Aboriginal participation in the management of the marine estate

The recent statutory review of the [Marine Estate Management Act 2014](#) (the Act) creates

an opportunity for traditional owners to be involved in planning for marine estates. To maintain and safeguard our cultural obligations, we would like to see the Act include an objective related to increasing co-management of sea country and Aboriginal participation in the management of the marine estate. This can include specific provisions to promote co-management of the marine estate by NSW Aboriginal groups, native title holders, and the state government.

As the new Closing the Gap Report (CTG) acknowledges, the connection between caring for country and Aboriginal and Torres Strait Islander

people's wellbeing is well known.¹ So is the importance of maintaining culture through knowledge transfer to younger generations. Partnering with traditional owners to co-design and manage marine estates provides a perfect opportunity to contribute to many of the new Closing the Gap (CTG) targets and meets a number of the CTG outcomes including:

- everyone enjoys long and healthy lives
- youth engaged in employment and education
- strong economic development and participation of people and their communities

- people enjoy high levels of social and emotional wellbeing
- cultures and languages are strong supported and flourishing
- people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

Section 13 of the Act, which lays out the required consultation on draft marine estate management strategies, is the perfect place to ensure the perspectives of Aboriginal people in NSW are incorporated into the management of marine estates. We are asking for section 13 of the Act to include specific reference to consultation with Aboriginal stakeholders and native title groups before a draft marine estate management strategy is submitted to the Minister.

In pursuit of this policy objective, Department of Primary Industries (DPI) and Environment, Energy and Science (EES) have the opportunity to collaborate with NSW Aboriginal groups and native title holders to fund and establish Indigenous ranger groups through the federal government's Indigenous Rangers – Working on Country program.² Indigenous ranger groups provide an opportunity to utilise a two-way approach combining traditional knowledge with training in conservation and land and water management. An Indigenous ranger group on the south coast of NSW will significantly improve on-the-ground management and compliance operations while also increasing skills and offering economic and employment opportunities to south coast Aboriginal people.

While the economic benefits of a ranger program are clear the social and cultural benefits are equally important. An Indigenous ranger group has the added benefit of linking young people with their elders to learn about and care for country, to learn and practice language and get community members outside and maintaining their physical and spiritual connection to country.

Exercise of native title rights to hunt, fish and gather

As traditional owners in NSW, and particularly on the south coast, we have the right to exercise our native title rights and interests under the [Native Title Act 1993 \(Cth\)](#) (NTA). While there has been an ongoing pattern of south coast Aboriginal people being prosecuted for fisheries offences, despite having the right to do so, we believe now is the time to work with government departments and local community to ensure everyone understands these native title rights.

Section 211 of the NTA provides that Commonwealth and State laws do not apply to prohibit or restrict native title holders from 'hunting, fishing, gathering, cultural or spiritual activity...in the exercise of their native title rights and interests'. This is confirmed in section 104A of the [Native Title Act 1994 \(NSW\)](#) which outlines that native title rights and interests, including the right to fish, cannot be extinguished by operation of a range of state legislation, including the [Marine Estate Management Act 2014](#).

Section 21 – 24 of the [Marine Estate Management Regulations 2017](#) gives authorised officers powers to remove persons or property from marine parks and aquatic reserves. It is imperative that it be made clear in this legislation, and to all government employees working in this space, that these provisions do not have any impact on the native title claimants and native title holders' valid rights and interests to participate in their traditional fishing and gathering rights.



Mullet run at Horseshoe Bay Bermagui 17 April 2018. Credit: Christiane Keller

There is also a great opportunity to make this clear to the wider community via a concerted public education campaign.

Amendments to the regulations are required, or at a minimum an assurance by way of ministerial direction, so that these powers respect the rights of native title holders and individuals exercising native title rights.

Sea urchin barrens

Traditional owners along the south coast have identified management of sea urchin barrens as a top priority and this has potential to be addressed under the [Marine Estate Management Strategy](#).

As noted above, as traditional owners for these waters we have a cultural obligation to see sea urchin barrens managed properly. Traditional owners have observed overfishing and over allocation of commercial abalone licenses leading to a reduction in the number of key sea urchin predators. This in turn has led to a huge increase in the number of sea urchins. Sea urchins are a pest and are having hugely detrimental effects on sea life on the south coast, and in turn our ability to exercise our native title rights and interests in these waters.

High numbers of sea urchin barrens affects the entire southern NSW region and the impact is increasing as the years pass. We need to act now. Our coast is well-loved and used and while tourist enjoy our beaches, they remain unaware of the environmental disaster occurring just under the surface of our ocean.

In developing a solution to this issue there is a great opportunity for collaboration between DPI, EES, and the Aboriginal community on the south coast. There is an urgent need for a process to remove the sea urchins and engage in regeneration efforts in ecosystems damaged by an increased sea urchin population.

This could include physical regeneration of the area after sea urchin removal. Couple this with Indigenous cultural knowledge transfer to ensure the problem doesn't resurface means the area could be successfully managed for generations to come. There are a large number of south coast Aboriginal people living in the affected areas with extensive diving experience who have very good knowledge of the water off the south coast and who could undertake this kind of work. Many people, particularly young people, would benefit from this kind of meaningful connection with their elders along with employment and engagement with DPI and EES staff.

Explore Aboriginal and Torres Strait Islander peoples' cultural connection to the sea and more on caring for sea country in the AIATSIS [Living off our waters exhibition](#).

Batemans Marine Park zoning

Cultural fishing for south coast Aboriginal people has an immense cultural, social, economic and health value. Native title claimants and native title holders should be explicitly exempted from any zoning restrictions. The zoning within the Batemans Marine Park has had a number of negative impacts on us as traditional owners.³ Many of our significant sites for cultural fishing have, for practical purposes, become inaccessible due to marine park zoning. Our people, who continue to fish in these areas, are at risk of being charged with violating marine park zoning regulations, notwithstanding their rights under the NTA.



Sea urchin. Credit: [Flickr](#)



Bingi Beach, NSW. Credit: Levi Lee

Further, marine park zoning has forced all cultural fishers and recreational fishers into a few small areas leading to over exploitation of marine resources in those areas. Increasing Aboriginal participation in the management of the marine estate will enable DPI and EES to identify specific areas which are affected by this and to then jointly identify and implement solutions to these issues.

Consultation forming part of the review process

Effective and genuinely representative involvement of traditional owners in these processes is vital to maintaining, strengthening, and transmitting traditional owners' history, beliefs and traditional laws and customs

to future generations, and ensuring these are appropriately recognised under the Marine Estate Management Act.

Engagement with native title holders must be sought in addition to, and as a separate exercise to, seeking public comment in relation to the review of the Act. This will improve consultation and engagement with Aboriginal people, and enable the DPI and EES to incorporate local Aboriginal knowledge and expertise of land and sea management into the management of marine parks.

Further, wherever possible this engagement must be undertaken as face to face consultation on Country. Personal dialogue will be much more powerful in

re-building relationships between native title holders, DPI and EES than remote written communications. This is the best vehicle to guarantee the provision of input that is meaningful, powerful, and timely.

¹ Department of the Prime Minister and Cabinet, *Closing the Gap Report 2020*, Australia, Department of the Prime Minister and Cabinet, 2020.

² Indigenous ranger projects were first funded in 2007 through the former Working on Country program. National Indigenous Australians Agency, ACT, viewed 12 November <https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-ranger-program>.

³ Department of Primary Industries, *Batemans Marine Park Zoning Map*, viewed 12 November, https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0008/656288/Batemans_Marine_Park_Zoning_Map.pdf.

Indigenous Research Exchange

By Donna-Maree Towney, Guditjmarra and Casey Millward, Kalkadoon AIATSIS

AIATSIS is committed to ensuring greater involvement of Aboriginal and Torres Strait Islander peoples in setting research priorities, leading projects and determining the appropriate collection and use of data about communities. Our leadership role includes the establishment and management of an Indigenous Research Exchange. The key objectives of the Exchange are to:

- connect people, data, ideas and evidence
- translate, synthesise, and disseminate evidence and data
- make research findings more accessible, more contestable and more useable
- shape research agendas
- promote good practice and use good evidence.

There are two key areas of activity for the Exchange.

The first activity is the Research Grants Program, which provides funding opportunities for projects that:

- support high quality Indigenous led research.
- improve the accessibility and availability of quality robust research and evidence based solutions.
- support organisations to participate in research activities that will have relevance and impact beyond the community and project.

The Research Grant Program aims to build the evidence base

to support Indigenous decision making and policy design through system changing and impact driven projects led by Aboriginal and Torres Strait Islander peoples.

The inaugural grant round closed February 2020 and 12 applications were successfully funded. The second round closed in October 2020 and applications are currently being considered. Details on a third and final round will be released in 2021.

The second activity is building a Knowledge Exchange Platform to make research findings more accessible, more contestable and more useable, especially for Aboriginal and Torres Strait Islander communities.

The platform will address the need for access to data and information at a local level, and provide a translatable evidence base for policy makers to design more effective programs and policies.

The platform aims to:

- make Aboriginal and Torres Strait Islander research and data accessible
- create an evidence base for Indigenous policy design
- showcase and support Indigenous knowledge translation
- create a powerful resource for Indigenous leadership and community-led decision making
- support nation-building through specific nation-based data

- support data sovereignty and self-determination
- change the narrative on Indigenous data collection, use and ownership
- provide links and networks to other data sources and knowledge repositories including the wide range of information available within AIATSIS.

Platform development is currently in progress, and is being led by Indigenous expertise, underpinned by core principles of Indigenous Data Governance (IDG), Indigenous Data Sovereignty (IDS) and Indigenous Cultural and Intellectual Property (ICIP).

This is an exciting opportunity for AIATSIS and Aboriginal and Torres Strait Islander peoples and organisations to work together to translate research into meaningful, useful and practical information.

For further information and updates on this exciting work, please keep an eye out on the [AIATSIS website](#) and [look out for our monthly newsletter that will be released in early 2021.](#)





An emotional and cultural archive

By Ophelia Rubinich, AIATSIS

The South West Aboriginal Land and Sea Council (SWALSC) has recently embarked on the first stage of a major digitisation project. SWALSC is the native title service provider for the traditional owners of the south-west of Western Australia, the Noongar people. One of their initiatives is to digitise all of the research files which span a period of over twenty years of native title operations.

The organisation holds decades of corporate, legal and research materials that tell the story of the Noongar people's native title journey. It is a rich collection about Noongar people, culture and country. As one SWALSC staff member explained,

It's not just a collection of materials, it's an emotional and cultural archive.

The SWALSC collection contains thousands of diverse records. These include oral history records, family history forms, department files,¹ anthropological field notes, Single Noongar Claim hearing materials and Aboriginal heritage site data. These records are vitally important accounts for Noongar families and for individuals.

It is envisaged that the digitised collection could be a valuable source of information, in particular for the Stolen Generations. It has the potential to support those trying to rebuild or repair connections with both family and country.

The material in the collection is also essential to support the six Noongar Regional Corporations in managing their South West Native Title Settlement benefits and resources.

Funding for the initial stage of the digitisation project was provided from SWALSC's corporate budget which financed two part-time staff for three months. Documents are scanned in PDF/A format for long term preservation and the scanning process incorporates optical character recognition to ensure document content is text searchable.



Top and above: Noongar performance on Noongar country. Credit: Photos provided by South West Aboriginal Land and Sea Council (SWALSC)

SWALSC senior anthropologist, Britta Kuhlenbeck, explained that the team has come up with some essential metadata and quality controls to manage the transfer of materials in the future.

Noongar people are an integral part of the project and one of the two digitisation staff members is a Noongar person. Quality assurance activities and adherence to set naming conventions form an integral part of the project. Digitisation ensures

that searching is practical and easy. Kuhlenbeck notes that the digitisation process does take time, but the team is determined to follow digital archiving best practice as it is critical for the preservation of the collection.

The SWALSC digitisation project is an exciting example of a native title organisation taking positive steps towards preserving records for future use by Noongar people, giving some balance to access and control of

the cultural knowledge contained in the collection materials.

Digitising materials provides long-term preservation of the collection and the team at SWALSC is proud that this important collection can be utilised for the benefit of Noongar people for generations to come.

¹ Files created by the Aborigines Department and its successor agencies.

First Glance: Surveying your land and native title claim archives

Digging into my archive I was amazed at the importance of the materials that I had. There are hundreds of photos and sound recordings from over a forty year period. It made me realise how urgent it is to get traditional owners access and copies.

– Toni Bauman, pilot study participant

The NTRU is currently running a pilot study with two land claim practitioners, one anthropologist and one lawyer, to explore what materials they have in their personal archives and work out how to document them.

A result of the pilot study is a user friendly ‘first glance’ guide and template to assist researchers to start assessing and documenting their collection. It encourages researchers to take a staged approach by first asking very basic questions about their collection, then identifying priorities for documentation, and lastly delving deeper to record detailed information.

We have designed the template so that the information it contains can be used by both collecting institutions

and Aboriginal organisations such as PBCs and NTRB/SPs to assess what is in a collection and to start the conversation about depositing or returning the materials.

To support practitioners to document their collections and begin the return conversation the NTRU will be publishing the template in the coming months.

If you are a land claim or native title practitioner and want to start documenting material in your personal collection please contact the ntru@aiatsis.gov.au



Retired lawyer’s archive spanning 46 years of land and native title claim work. Credit: David Parsons



Various materials at high risk of deterioration or unreadability including audio cassettes, VHS and beta videos and floppy discs. Credit: Toni Bauman

10 Years of Native Title

By Mia Stone, AIATSIS

It's been almost 30 years now since native title was first recognised in the historic decision of *Mabo v Queensland (No 2)*¹ in 1992. Many of the finer details of native title were unclear at the time, and indeed caused panic among landowners and other established interest-holders.² Since then, the law has grown incredibly quickly, with significant developments over the last ten years. The most notable of these are changes to the commercial use of resources, a shift in preference towards 'yielding' over extinguishment, changes to native title agreements, compensation and an unprecedented number of unsuccessful reform bills.

2013: Commercial use of resources

In 2013, the High Court caused a stir when in *Akiba v Commonwealth*³ it found a native title 'right to access resources and to take for any purpose resources in the native title areas'.⁴ The decision overturned years of thinking that native title rights were limited by purpose – those purposes not extending to commercial uses.⁵ Such thinking was informed by the conception of native title as a 'bundle' of highly-specific and fragmented rights.⁶ As a result, determinations and settlements tended to specify that native title rights could be exercised for 'personal, domestic and non-commercial communal purposes' only.⁷ In failing to limit the right in this case, the Court noted that '[t]he purpose which the holder of that right may have had for exercising the right on a particular occasion was not an incident of the right;

it was simply a circumstance attending its exercise'.⁸ In other words, the focus is on the right, and not how it is exercised. *Akiba* has been followed in a number of subsequent decisions, suggesting a fundamental shift in the conception of native title.⁹ How useful this will be in practice remains to be seen. Even where commercial rights are recognised under native title law, *Akiba* confirmed that their exercise will still be subject to state regulation including, for example, the need to obtain commercial fishing licenses.¹⁰

2014: 'Yielding' over extinguishment

Recent decisions have raised the bar in terms of what is required for an act to extinguish native title. The Full Court of the Federal Court in *Brown v Western Australia*¹¹ held that even a mining lease and the construction of a mine and mining town were not sufficient to extinguish native title. On the Court's reasoning, no extinguishment occurred as the lease did not grant rights of exclusive possession and the acts were (in theory) reversible.¹² While the mine was in operation, native title rights were 'overridden' in favour of the third-party rights, but if the mine were late decommissioned or rehabilitated, native title rights would again be exercisable.¹³ It would seem that native title can continue to exist even where the exercise of native title rights has been suppressed. It is questionable, however, to what extent native title can be separated from the rights which give it meaning. This is particularly the case where the suppressing

acts are indefinite or less 'reversible' in practice as they might be represented to be on paper.

2017: Native title agreements

2017 saw a disagreement between the courts and legislature around the requirements for concluding an Indigenous Land Use Agreement (ILUA). ILUAs are agreements between native title holders and development proponents for the management of future acts on native title land. In practice, they usually facilitate a development project in exchange for benefits to native title holders such as remuneration or public services including schools and medical centres.¹⁴ Previously, the courts had considered ILUAs to be valid if signed by at least one member of the native title claim group.¹⁵ However, many Indigenous communities disagree over whether to lend support to development projects, and this decision tilted the balance in favour of development. *McGlade v Native Title Registrar*,¹⁶ reversed *Bygrave*, holding that all parties to the agreement were required to sign. This raised the bar considerably and also caused significant uncertainty about the validity of previous ILUAs that had been registered on the basis of *Bygrave* and which did not meet these conditions.¹⁷ The legislature responded by passing the *Native Title Amendment (Indigenous Land Use Agreements) Act 2017 (Cth)* which essentially trod a middle ground. The Act validated historical ILUAs and those awaiting registration, but required future ILUAs to be signed by a majority of native title holders.¹⁸

Native Title TIMELINE

By Mia Stone, AIATSIS

To find out more visit the [PBC website](#)



AIATSIS

60 – 70, 000 years
before colonisation

Aboriginal and
Torres Strait
Islander
occupation
of the land

1788

Sovereignty for
VIC, NSW, QLD

1824–25

Sovereignty
for NT

31 October
1975

Racial
Discrimination
Act 1975

20 May
1982

Eddie Mabo
and others filed
'Mabo' case in
High Court

3 June
1992

Mabo (No 2):
High Court
recognises
native title
and overturns
terra nullius

4 June
1997

10-point plan as
response to Wik

6 July
1998

Yarmirr: first
sea claim

30 September
1998

Native Title
Amendment
Act 1998

17 September
2009

Native Title
Amendment
Act 2009

16 December
2010

Native Title
Amendment Act
(No 1) 2010

21 March
2011

Native Title
Amendment
(Reform)
Bill 2011
(not passed)

4 July
2014

Pilki: commercial
native title rights
confirmed

3 June
2017

25 years after
Mabo the
number of PBCs
grew to 168

14 June
2017

McGlade: High
Court finds that
all applicants
must sign ILUA
for it to be
registered

1829

Sovereignty for WA

1834

Sovereignty for SA

14 August
1963

Yolngu bark petition asserting land ownership

27 April
1971

Millirrpum: Yolngu spiritual connection to land is acknowledged by the court but not under Australian law

19 December
1993

Native Title Act 1993 enacted with retrospective application to state/territory legislation from 1 July 1993

27 June
1996

Native Title Amendment Bill 1996

23 December
1996

Wik: High Court finds native title and pastoral leases can co-exist

7 April
1997

First PBC in Australia: Dughutti Elders Council (Aboriginal Corporation) RNTBC

18 December
1998

Yorta Yorta: High Court establishing native title under s 223

8 August
2002

Ward: High Court finds NTA mandates partial and permanent extinguishment

7 April
2007

10 years after first PBC registered the number grew to 52

15 April
2007

Native Title Amendment Act 2007

7 August
2013

Akiba: Torres Strait sea claim recognising commercial and trade rights

28 August
2013

Banjima: Federal Court affirms connection and 'society' requirements

4 March
2014

Native Title Amendment (Reform) Bill 2014 (not passed)

12 March
2014

Brown: native title rights can 'yield' inconsistent rights without being extinguished. Endorsed by Congoo.

22 June
2017

Native Title Amendment (Indigenous Land Use Agreements) Act 2017

13 March
2019

Griffith: High Court awards \$2.5 million native title compensation

17 October
2019

Native Title Legislation Amendment Bill 2019 (not passed)

2019: Compensation

The compensation case of *Northern Territory of Australia v Griffiths*¹⁹ has been named 'the most significant native title decision since *Mabo*'.²⁰ It is the first time compensation provisions in the *Native Title Act 1993 (NTA)* (Cth) have been applied successfully in court. These provisions state that native title holders are entitled to compensation for activities which diminish or damage their native title rights and interests²¹ but had not previously been tested, likely due to the need to first establish the existence of native title in the area. The final sum awarded in *Griffiths* was \$2 530 350,²² suggesting total government liability might be quite large, and something that will need to be factored into future budgets. *Griffiths* clarifies the legal test to be applied when calculating compensation. Importantly, compensation is payable for both economic and cultural loss.²³ The economic component is calculated by reference to the freehold value of the land (less than 100% for non-exclusive native title) and attracts interest.²⁴ The cultural component of the compensation payment in *Griffiths* came to \$1.3 million.²⁵ The method used to calculate this element is not as clear, however, and likely boils down to a value judgment.

It has long been thought that compensation is only payable for acts occurring on or after 31 October 1975 when the *Racial Discrimination Act 1975* (Cth) came into effect.²⁶ However a claim by *Galarrwuy Yunupingu*,²⁷ is challenging this on the basis that under the Constitution any acquisition of land must be on 'just terms'.²⁸ If successful, this could substantially increase the liability of the federal government for dispossession. Nevertheless,

the potential impact is limited by the absence of similar protection in state and territory constitutions.

2010–2020: Attempted reform

The decade between 2010 and 2020 saw a great deal of attention on native title reform. An unprecedented number of native title amendment bills passed through the houses, but without much success. The only bill of this period to pass was the first – the *Native Title Amendment Act (No 1) 2010* (Cth) – which expedited the development of public housing on native title land. It lacked broad community support due to inadequate consultation provisions, allegations of discrimination and issues of effective extinguishment of native title.²⁹ In 2011, the *Native Title Amendment (Reform) Bill 2011* (Cth) sought to legislate for sweeping progressive change to the NTA including a rebuttable presumption of continuity of connection, a broader definition of 'traditional' and greater scope for disregarding historical extinguishment.³⁰ It failed to pass through the Senate and lay dormant until 2014 when the changes were substantially reintroduced with the *Native Title Amendment (Reform) Bill 2014* (Cth), however, this also failed.³¹ The *Native Title Legislation Amendment Bill 2019* (Cth) attempted to reform the claims resolution process, agreement-making, Indigenous decision-making and dispute resolution processes but again did not get up.³² The lack of success may have been partly due to the rapid changes in political leadership that characterised the past decade.

¹ (1992) 175 CLR 1 ('*Mabo*').

² J Mansfield, 'Indigenous Land Rights: Australia's Response Following *Mabo* - the Present and the Future', *Federal Court of Australia* (Speech,

John Mansfield Lecture, University of South Australia, 17 August 2017) 7.

³ (2013) 250 CLR 209 ('*Akiba*').

⁴ *Ibid* 239 (emphasis added).

⁵ P McCabe, 'Pilki and Birriliburu: Commercial Native Title Rights after *Akiba*' (2015) 19(2) *Australian Indigenous Law Reporter* 64, 65.

⁶ *Ibid*.

⁷ See, eg, *Foster on behalf of the Gunggari People #3 v State of Queensland* [2014] FCA 1318.

⁸ *Akiba* (n 3) 241.

⁹ See, eg, *Western Australia v Willis on behalf of the Pilki People* (2015) 329 ALR 562, *BP (deceased) on behalf of the Birriliburu People v Western Australia* [2014] FCA 715 and *Manado v Western Australia* [2018] FCAFC 238.

¹⁰ *Akiba* (n 3) 244.

¹¹ (2012) 208 FCR 505.

¹² *Ibid* 506.

¹³ *Ibid* 597.

¹⁴ *Aurora*, *Handbook for Interns: Native Title Specific Information* (Report, 2019) 30.

¹⁵ *QGC Pty Ltd v Bygrave (No 2)* (2010) 189 FCR 412 ('*Bygrave*').

¹⁶ [2017] FCAFC 10.

¹⁷ '25 Years of Native Title Recognition', *National Native Title Tribunal* (Document, 2017) 8 <<http://www.nntt.gov.au/Documents/Native%20Title%20Matures.pdf>>.

¹⁸ *Ibid*.

¹⁹ 93 ALJR 327 ('*Griffiths*').

²⁰ R Abraham, W Isdale, 'Timber Creek: The Most Significant Native Title Decision Since *Mabo*', *Minter Ellison* (Blog Post, 21 March 2019) <<https://www.minterellison.com/articles/timber-creek>>.

²¹ *Native Title Act 1993* (Cth) s 51(1) ('NTA').

²² *Griffiths* (n 19) 382.

²³ *Ibid* 351.

²⁴ *Ibid* 336.

²⁵ *Ibid* 382.

²⁶ *Aurora* (n 14) 9.

²⁷ *Galarrwuy Yunupingu (on Behalf of the Gumatj Clan or Estate Group) v Commonwealth* (Federal Court, NTD43/2019, 28 November 2019) <<https://www.comcourts.gov.au/pas/file/Federal/P/NTD43/2019/actions>>.

²⁸ Constitution s 51(xxxi).

²⁹ C Stacey and J Fardin, 'Housing on Native Title Lands: Responses to the Housing Amendments of the *Native Title Act*' (2011) 4(6) *Land Rights, Laws: Issues of Native Title* 1, 1.

³⁰ *Native Title Amendment (Reform) Bill 2011* (Cth) s 12. and s 11.

³¹ *Aurora* (n 14) 4.

³² *Ibid*.

Providing leadership in ethics and protocols for Aboriginal and Torres Strait Islander research

By Samantha Faulkner, Badu and Moa Islands, Torres Strait and Wuthuthi and Yadhaigana, Queensland, AIATSIS and Patricia Albert, Tableland Yidinji Wadjanbarra, AIATSIS

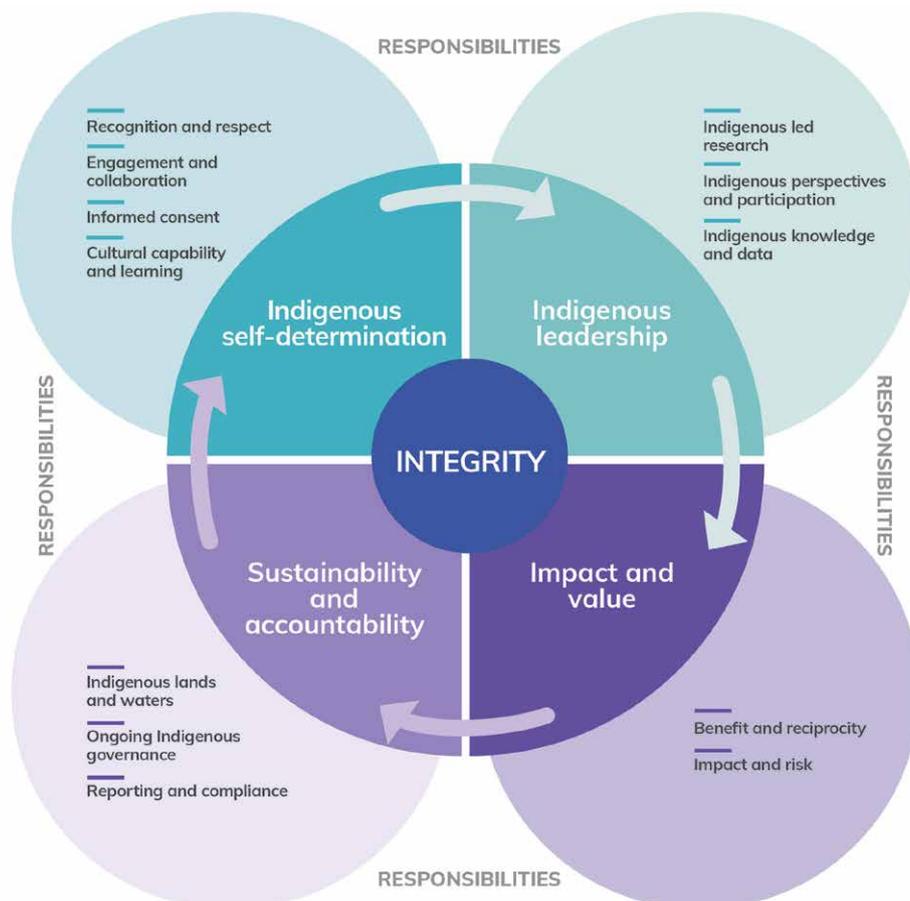
AIATSIS is pleased to announce the release of the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (AIATSIS Code of Ethics) in conjunction with A guide to applying the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (the Guide). These documents will supersede and replace the Guidelines for Ethical Research in Australian Indigenous Studies 2012 (GERAIS).

The AIATSIS Code of Ethics is issued under the authority of

our governing legislation which requires AIATSIS to provide leadership in ethics and protocols for Aboriginal and Torres Strait Islander research and activities related to Aboriginal and Torres Strait Islander collections.

The AIATSIS Code of Ethics is structured according to four principles that underpin ethical and responsible Aboriginal and Torres Strait Islander research (see below). These four principles are Indigenous self-determination, Indigenous leadership, impact and value, and sustainability and accountability. Each principle includes a set of responsibilities for conducting Aboriginal and Torres Strait Islander research, with integrity at the core.

The AIATSIS Code and the Guide are supported by online resources, including case studies, tools and templates that are available on the AIATSIS ethics website. These will be released over the next 12 months. For more information please visit <https://aiatsis.gov.au/ethics> or contact ethics@aiatsis.gov.au.



Native Title Snapshot 2020

By Ophelia Rubinich and Christiane Keller, AIATSIS

The native title timeline in this newsletter highlights the many milestones in Aboriginal and Torres Strait Islander peoples' native title journey.

The courts reached 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 17 October 2020, there were 419 positive determinations over 3,573,495 km² of land and waters in Australia.

Five years after the Mabo decision the first Registered Native Title Body Corporate, also known as a Prescribed Body Corporate (PBC), was registered. In 1997, the Dunghutti Elders Council (Aboriginal Corporation) RNTBC became the first official corporation to hold and manage native title rights for native title holders of land at Crescent Head on the NSW north coast.¹

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 223 PBCs registered by October 2020. 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

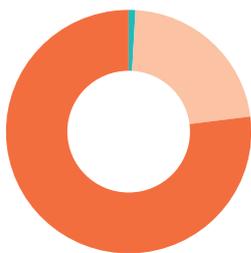
Each year NTRU compiles native title determination information from the [National Native Title Tribunal's register](#). This information provides you with a snapshot of how many native title determinations and PBCs there are to date. It also displays how much of Australia's land and waters have been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

NORTHERN TERRITORY

In the Northern Territory (NT) there have been 109 positive determinations of native title over 324,380 km² of land and waters.

	Land and waters (km ²)	Land and waters(%)
Total land and waters	1,419,630	100
Land/waters under native title	326,714	23
Land/waters not under native title	1,092,916	77
Exclusive native title	12,598	0.89
Non-exclusive native title	314,116	22.1

How much of the NT is under native title?



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

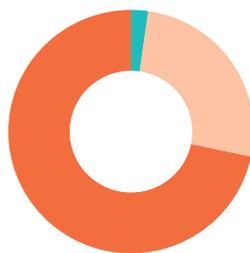
	Total PBCs	Small	Medium	Large
NT	34	32	2	0

QUEENSLAND

In Queensland (QLD) there have been 146 positive determinations of native title over 599,931 km² of land and waters.

	Land and waters (km ²)	Land and waters(%)
Total land and waters	1,851,736	100
Land/waters under native title	523,948	28.3
Land/waters not under native title	1,327,788	71.7
Exclusive native title	41,875	2.3
Non-exclusive native title	482,073	26

How much of QLD is under native title?



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

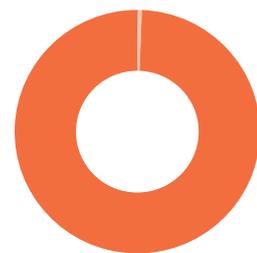
	Total PBCs	Small	Medium	Large
QLD	89	66	21	1

NEW SOUTH WALES

In New South Wales (NSW) there have been 16 positive determinations of native title over 5,532 km² of land and waters.

	Land and waters (km ²)	Land and waters(%)
Total land and waters	809,592	100
Land/waters under native title	4,835	0.6
Land/waters not under native title	805,117	99.4
Exclusive native title	685	0.08
Non-exclusive native title	4,150	0.5

How much of NSW is under native title?



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

	Total PBCs	Small	Medium	Large
NSW	9	4	5	0

¹ National Native Title Tribunal, 'Dunghutti native title determination lodged in Federal Court', 7 April 1997, viewed 2 November 2020, <http://www.nntt.gov.au/News-and-Publications/latest-news/Pages/Dunghutti_native_title_determination_lod.aspx>.

*Note that the land mass of claims cannot be sorted from total amount of land and waters within claim boundaries – this information is not included in native title vision. The calculations in this article should be read as an approximate percentage of native title land and waters to Australia’s total area.

This data is current as at 17 October 2020. 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>

National

Nationally there have been 419 positive determinations of native title over 3,715,696 km² of land and waters.

	Land and waters (km ²)	Land and waters (%)
Total land and waters	8,099,264	100
Land/waters under native title	3,180,446	39.2
Land/waters not under native title	4,918,818	60.7
Exclusive native title	1,048,924	12.9
Non-exclusive native title	2,131,522	26.3

	Total PBCs	Small	Medium	Large
National	223	150	63	10

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.

How to read the tables

Land/waters under native title includes all positive determinations

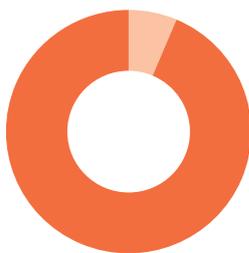
Land/waters not under native title includes extinguished, native title does not exist and yet to be determined

VICTORIA

In Victoria (VIC) there have been 4 positive determinations of native title over 25,924 km² of land and waters.

	Land and waters (km ²)	Land and waters (%)
Total land and waters	237,657	100
Land/waters under native title	15,170	6.4
Land/waters not under native title	222,487	93.6
Exclusive native title	0	0
Non-exclusive native title	15,170	6.4

How much of VIC is under native title?



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

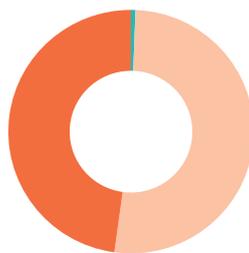
	Total PBCs	Small	Medium	Large
VIC	4	0	3	1

SOUTH AUSTRALIA

In South Australia (SA) there have been 31 positive determinations of native title over 613,367 km² of land and waters.

	Land and waters (km ²)	Land and waters (%)
Total land and waters	1,044,353	100
Land/waters under native title	544,903	52.2
Land/waters not under native title	499,450	47.8
Exclusive native title	6,094	0.6
Non-exclusive native title	538,809	51.6

How much of SA is under native title?



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

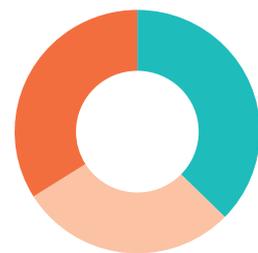
	Total PBCs	Small	Medium	Large
SA	20	9	9	2

WESTERN AUSTRALIA

In Western Australia (WA) there have been 114 positive determinations of native title over 1,873,974 km² of land and waters.

	Land and waters (km ²)	Land and waters (%)
Total land and waters	2,642,753	100
Land/waters under native title	1,745,852	66.1
Land/waters not under native title	896,901	33.9
Exclusive native title	987,672	37.4
Non-exclusive native title	758,180	28.7

How much of WA is under native title?



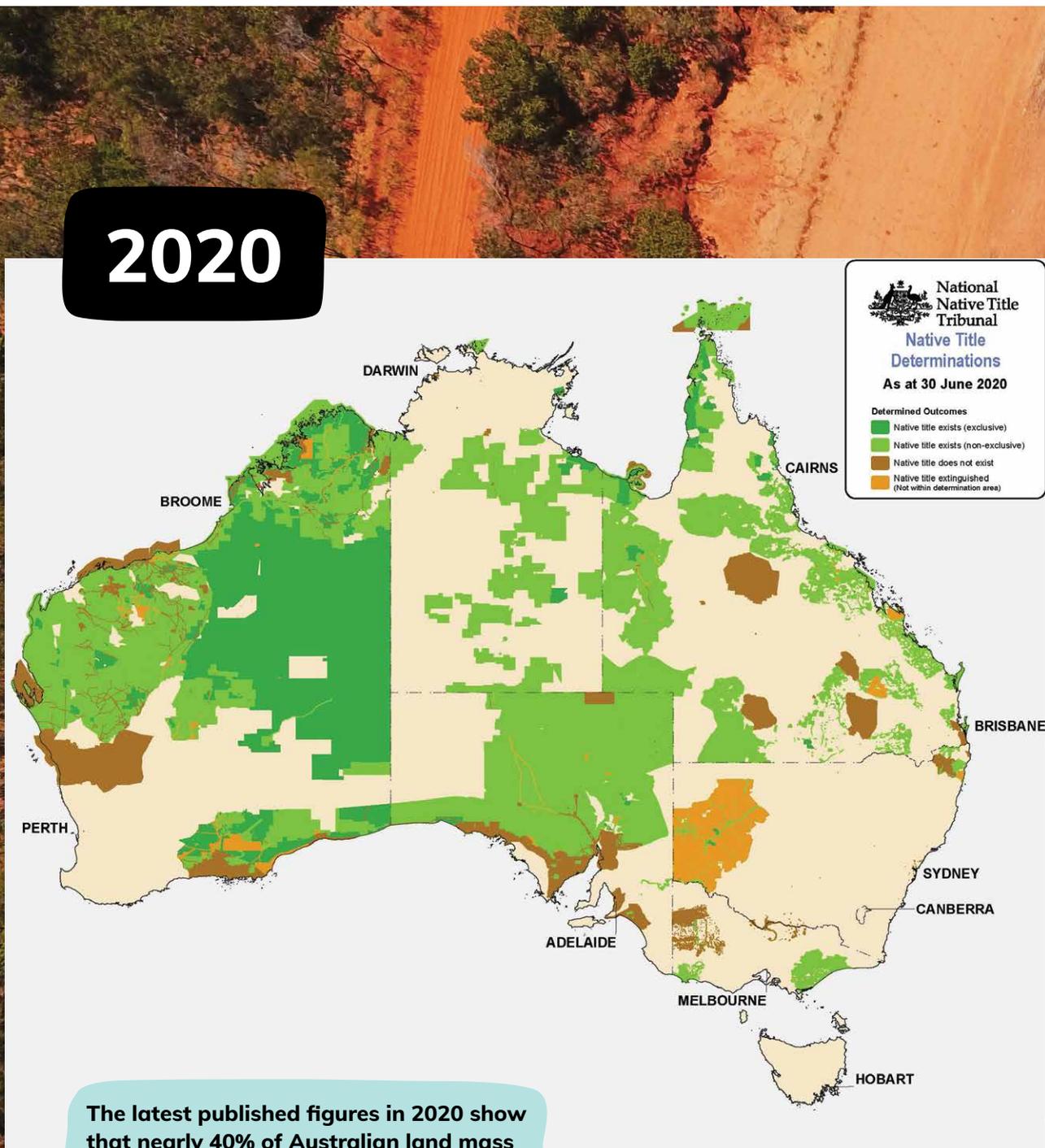
■ Exclusive native title ■ Non-exclusive native title ■ Land and waters not under native title

	Total PBCs	Small	Medium	Large
WA	66	37	22	7

How much of Australia is recognised

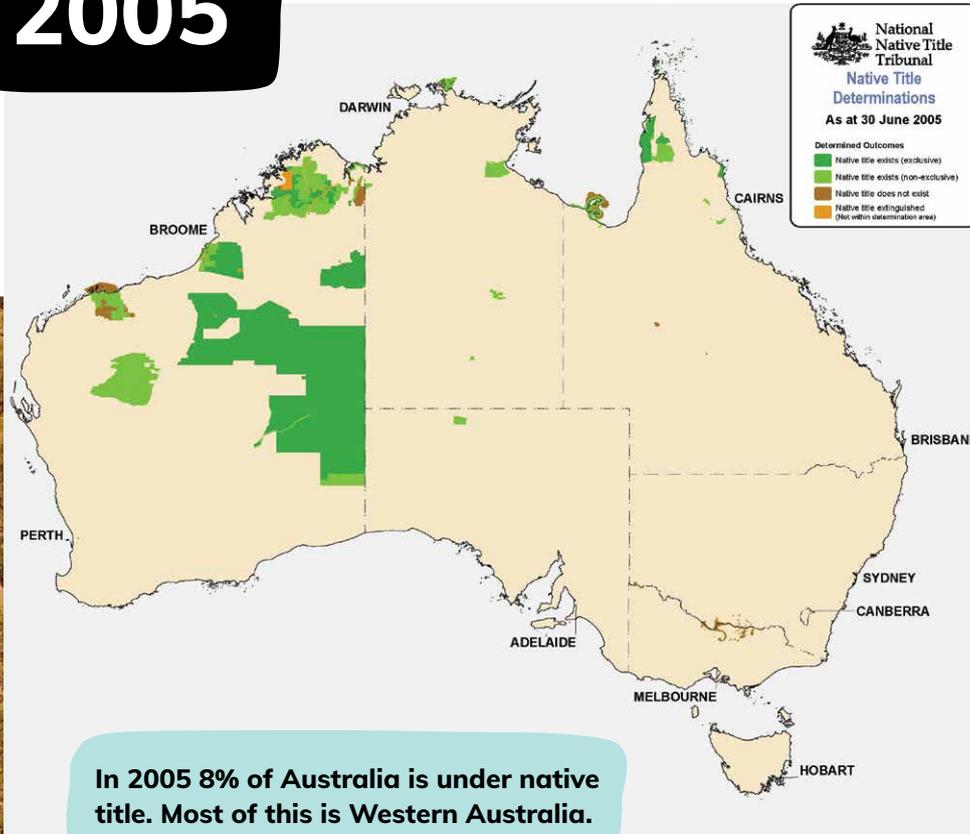
NATIVE TITLE

Year	Percentage of Australia under Native Title
2000	-
2005	7.9%
2010	12.6%
2018	35%
2019	37%
2020	39.2%

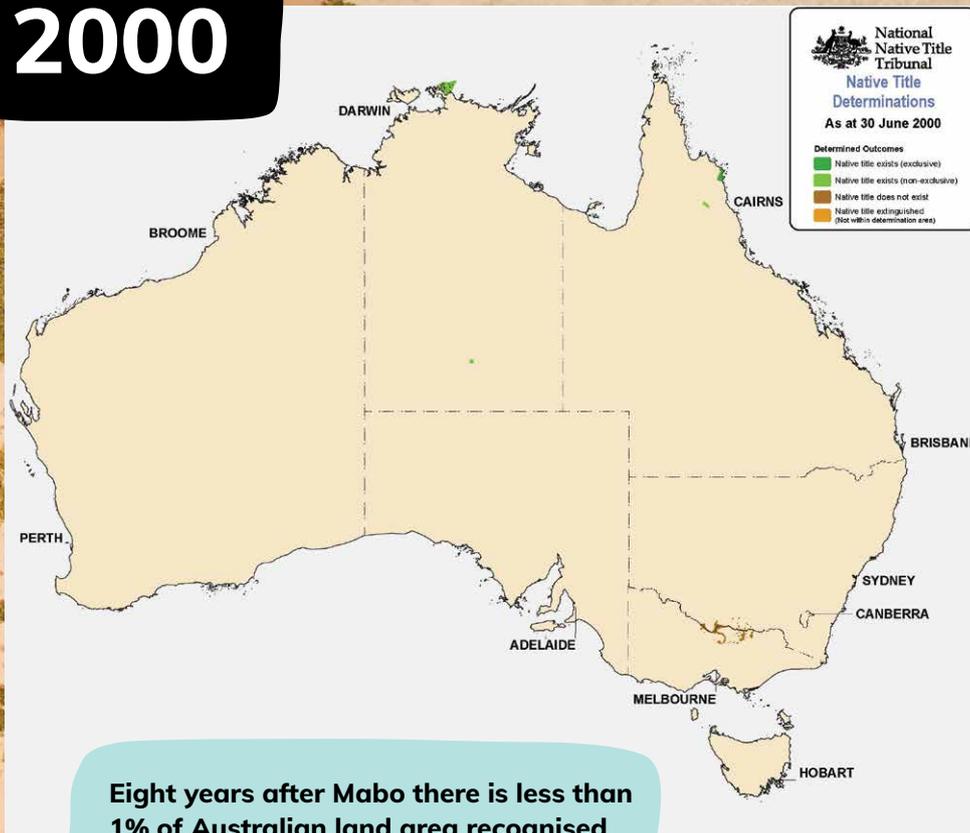


The latest published figures in 2020 show that nearly 40% of Australian land mass is covered by native title.

2005



2000





Updating the PBC website

By Christiane Keller, AIATSIS

The Native Title Research Unit's (NTRU) Prescribed Bodies Corporate (PBC) website has just had a major update.

The post-determination phase of native title is providing a range of challenges and opportunities for PBCs as they manage their native title rights and engage in a number of other activities to maintain country, culture and community. To support the goals and aspirations of PBCs the NTRU has updated and expanded the PBC website.

AIATSIS has been working and conducting research with PBCs since 2005, just as the number of native title determinations were increasing. Back then only 45 PBCs were operating across Australia. The NTRU supported these PBCs to advocate for their interests with state and federal governments and started national PBC meetings and regional PBC workshops.

Now with over 220 PBCs across the nation, NTRU research continues to provide insight into this expanding sector and creates a better understanding of the challenges facing native title holder communities as they manage their native title rights.

Results from the first national PBC survey run by the NTRU in 2013 showed, for example, the need of adequate resourcing and support for PBCs, both in the organisations initial set up and in the longer term. The 2019 PBC survey shows that in addition to fulfilling their native title obligations the majority of PBCs are now running cultural and environmental services.¹ Many PBCs are also looking for extra training and are wanting to increase their skills, expertise and knowledge.

Providing information is a key factor in PBC support and the NTRU runs a number of information services. One of these services is the PBC website which assists PBCs to better understand their rights, obligations and functions and provides relevant resources and tools.

To respond to the changing needs of PBCs the website has expanded to become a hub of information for new PBCs just starting out, or established PBCs looking for information on particular topics or finding resources relevant to their needs. It is also an excellent resource for the wider native title sector. It provides a wealth of information including, profiles on each PBC and their native title holdings, contact details for Native Title Representative Bodies and Service Providers (NTRBs/SPs) and native title relevant news and events.

The PBC website is divided into two main sections:

Learn for relevant and practical information such as:

- [native title and PBCs](#)
- [role and function of a PBC](#)
- [key players in a PBC](#)
- [building PBC business](#)
- **Find** for quick reference and access to information such as:
 - [find a PBC or a partner](#)
 - [find funding and grants or training opportunities](#)
 - [news and events](#)
 - [resources and publications](#)

All existing pages have been updated and usability is enhanced with improved searchability and by including easy access to relevant resources and links.

New PBC web pages include:

- [alternative settlement](#)
- [compensation](#)
- [communication strategies and social media](#)
- [PBCs and research partnerships](#)

Many practical resources have been added such as downloadable workbooks, guidelines, checklists and templates relevant to PBC

business. These can be altered according to your PBC's needs.

Practical resources include:

- templates for [staff and board induction](#)
- a [funding workbook](#)
- a plain English [Code of Conduct](#) template
- workbooks to get involved with PBCs from a [youth](#) and [PBC perspective](#).



The [national PBC snapshot](#) provides up-to-date statistics that can now be downloaded in a number of formats. The addition of photos, diagrams and videos enhances the viewer experience.

Many sections of the PBC website are updated regularly such as news, events and [COVID-19 information](#), others on a quarterly basis including the [PBC profiles](#), [funding](#), [training opportunities](#).

Share your views on the PBC website and how we can assist with other information your PBC needs via the NTRU email ntru@aiatsis.gov.au or by phone 02 6261 4223.

¹ B Burbidge, M Barber, TM Kong & T Donovan, *Project report: 2019 survey of Prescribed Bodies Corporate (PBCs)*, AIATSIS, Canberra, forthcoming.



Yawuru PBC AGM, Liyan-ngan Nyirrwa (in Broome). Credit: Yawuru PBC



Yawuru country, Kimberley. Credit: Simon Rowell



AIATSIS building name Maraga celebrates Ngunnawal language

After nearly two decades, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has officially named its building Maraga, a Ngunnawal word for a strong and robust shield.

AIATSIS consulted the United Ngunnawal Elders Council and the Winanggaay Ngunnawal Language Group who provided the building's name, Maraga, which is a waddy shield. A waddy shield is a tool of dual purpose offering the holder protection against the powerful waddy spear/club, and which can also be used as a coolamon to hold babies and carry food.

“We are excited AIATSIS is naming its building Maraga. For our community this is a step closer to acknowledging that this land is ancient, and its features, waterways and landmarks have always had names.

Ngunnawal has always been spoken here – but through policy and deliberate effort it diminished. Now, through hard work and the support of AIATSIS we are restoring it, remembering it, and speaking it.”

– Caroline Hughes, Winanggaay Ngunnawal Language Group Coordinator.

To AIATSIS CEO Craig Ritchie the naming is both symbolic and significant, recognising and acknowledging the Ngunnawal land upon which AIATSIS sits and signalling the importance of embracing Indigenous languages.



Top: Maraga building renaming ceremony. Credit Gavin Blue

Right: Maraga building naming ceremony from left to right Michael Bell, Alinta Barlow, Wally Bell, Jude Barlow, Mary Mudford, Bradley Bell, Melissa Bell, Karen Denny. Credit: Colin MacDougall

“No language is lost. With this simple act of naming our building Maraga, we’re contributing to Indigenous languages being more prominent and visible in everyday life.

When AIATSIS relocated to the Acton Peninsula, it marked an exciting era for the Institute. Naming the building to Maraga not only reaffirms and strengthens our connection with the Ngunnawal people, it also highlights the importance of language for First Australians.”

– Craig Richie, AIATSIS CEO



Maraga building naming ceremony.
Credit: Colin MacDougall

Naming the building Maraga is an outcome of AIATSIS’ commitment to the UN 2019 International Decade of Indigenous Languages and reinforces the outcomes of the National Indigenous Languages Survey by AIATSIS.

AIATSIS continues to support communities and revitalising language. The National Indigenous Languages Survey found the benefits of languages for Indigenous peoples include positive economic outcomes across health, well-being, employment and education.

Find out more about Indigenous language research at AIATSIS and our unique web-based Indigenous language resource Austlang on the new [AIATSIS website](#).

Many PBCs have created language programs to strengthen language and culture in their communities. The Yawuru PBC and the Bularri Muurlay Nyanggan Aboriginal Corporation (BMNAC) are great examples. Each PBC has their own way of protecting, maintaining and teaching their language.

The Yawuru PBC created The Mabu Yawuru Ngan-ga Language Centre and have partnered with local primary schools to introduce Yawuru to broader Broome community.

Goori Learning Centres were created by BMNAC to help meet the educational ambitions of their community. BMNAC have linked these with the Gumbaynggirr Language Revitalisation Programs and cultural camps to further connect families to their language and culture.



Maraga building naming ceremony.
Credit: Colin MacDougall

INVITATION

to contribute to the Native Title Report 2021



June Oscar AO,
Aboriginal and Torres
Strait Islander Social
Justice Commissioner.

The Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO, is beginning work on the Native Title Report 2021. The report will focus on women's voices and stories about their experiences in the native title system, and women's opinions on what needs to change and what that change would look like.

The Social Justice Commissioner invites those with experience in the native title system to contribute to the report by completing an **online survey** and/or a **guided submission**.

The survey is for Aboriginal and Torres Strait Islander women only while the submission is open to everyone with experience in the native title system.

For more information, and to contribute, go to the Australian Human Rights Commission website: www.humanrights.gov.au/have-your-say.



**Australian
Human Rights
Commission**

Save the date

2021 AIATSIS Summit 31 May – 4 June

National Native Title Conference & National Indigenous Research Conference

Join us in 2021 for the AIATSIS Summit. For the first time ever the AIATSIS National Native Title Conference and the National Indigenous Research Conference will be held together over five days.

aiatsis.gov.au/2021-summit

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