



**AIATSIS**

# **Native Title** **NEWSLETTER**

Issue 1 | 2021



# WELCOME

## to the Native Title Newsletter 2021



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.

In this edition we look at the work of Traditional Owners post-determination. We analyse the results of the AIATSIS survey on the continuing connection of Yuin people to Sea Country and the impact of the Native Title Legislation Amendment Act 2021 (Cth) on PBCs.

We also explore the varied priorities of native title organisations by unpacking the outcomes of the 2019 PBC survey and look at the wealth of information out there that can be returned back to communities. Finally, we hear about how

the Quandamooka Yoolooburrabee Aboriginal Corporation is engaging with its younger members to build long term governance and capacity outcomes.

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](mailto:ntru@aiatsis.gov.au)

Above: Quandamooka Yoolooburrabee Aboriginal Corporation Rangers participating in land care on Minjerrabah (North Stradbroke Island), 2021. Photo: AIATSIS.

Cover: Quandamooka Country, View of Minjerrabah coastline (North Stradbroke Island), QLD. Photo: Steph Bloxsome.

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AIATSIS acknowledges the funding support of the National Indigenous Australians Agency.

ISSN: 1447-722X

Editor(s): Dora Bowles, AIATSIS.

Design and typesetting: AIATSIS.

Printed by: University Printing Service, ANU.

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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The 2019 PBC Survey





# Under the sea: Sea Country connections on the south coast of New South Wales

By Lilli Ireland, Melukerdee, AIATSIS

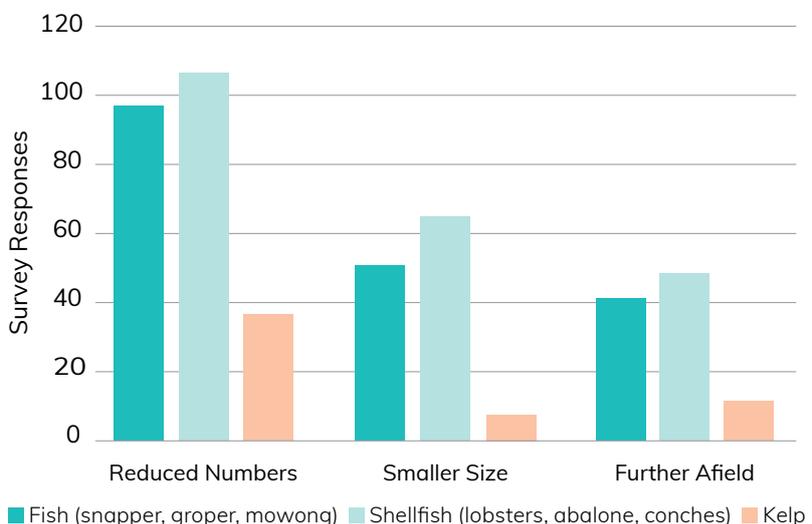
For over 50,000 years, Aboriginal people in New South Wales have managed marine resources. Sea Country is vital to saltwater communities around Australia, contributing to individual and community health and wellbeing, economic development and livelihoods. AIATSIS has been working alongside the New South Wales Aboriginal Fishing Rights Group to highlight and protect the continuing connection of the Yuin nation to their waters. In December 2020, AIATSIS visited Mystery Bay, New South Wales, to speak to people on Country. Traditional custodians were surveyed on their relationship to Sea Country, customary fishing and diving practices, and any changes witnessed to Sea health.

## What is happening beneath the surface?

Similar to many ocean ecosystems, Sea Country on the south coast of New South Wales is under threat from increasing pressures. The Indigenous community who have lived on the coast for generations are deeply in tune to its health and these changes.

Growing threats have resulted in a decline in size, number and availability of the sea resources.

Graph 1: Changes to sea resources

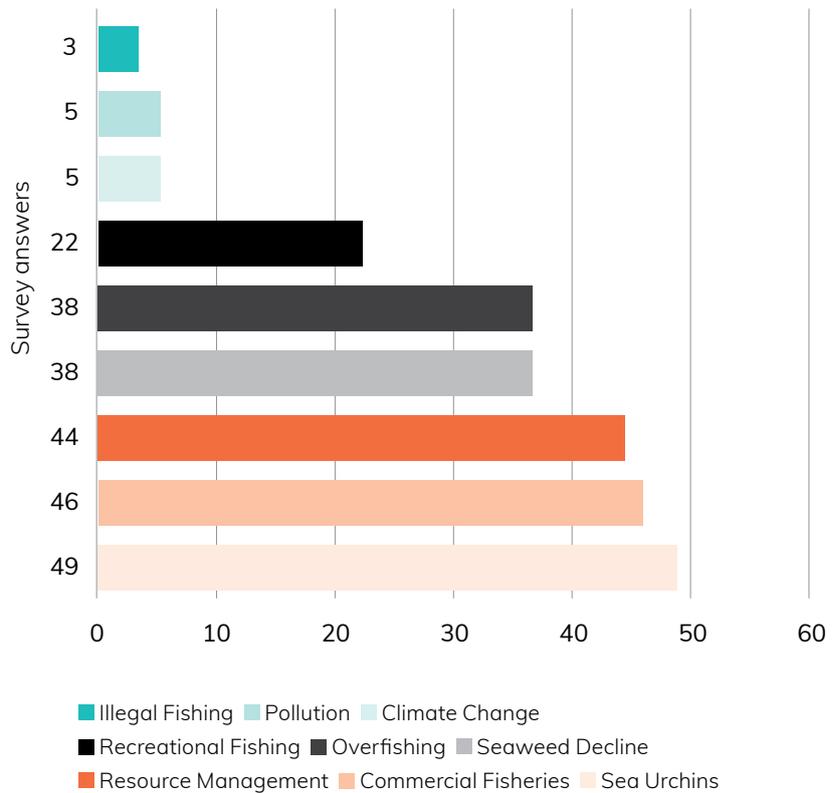


Sea urchins, commercial operations and current resource management regimes were identified as the key causes of Sea Country degradation.

*Probably fifty per cent of our reefs along the coast are turning into sea urchin barrens and there's just nothing there. Everything is dying off. Our people have been accessing these waters for 50,000 years. They've noticed these differences.*  
 – Wally Stewart

The identification of these threats is not new. Since consultation with saltwater communities in 2002, these threats have been described by Traditional Owners who have consistently maintained the need to recognise Indigenous connection and rights to Sea Country.<sup>1</sup> With little action since, but a rise of threats – the call for Indigenous participation in sea management is greater than ever.

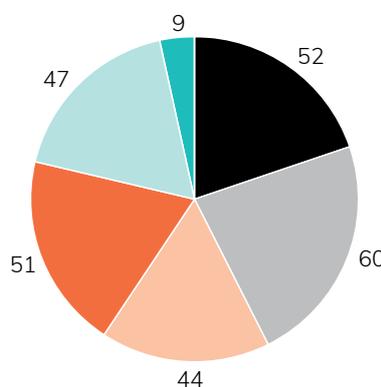
**Graph 2: What is impacting Sea Country?**



**What if Sea Country was lost?**

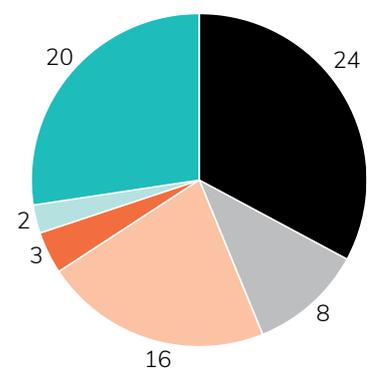
The ongoing connection to Sea Country and customary practices on the South Coast is clear. Further decline in sea health would be devastating to individuals, culture, communities, and future generations. The need for circumstances to improve is unanimous: 100 per cent of participants said it is critical to look after Sea Country.

**What would happen?**



- Loss of Culture
- Loss of Seafood
- Loss of Education
- Poor Health
- Impact on Community Connection
- Other (employment, mental health, family)

**How would you feel?**



- Devastated
- Lost
- Concerned for Future Generations
- Angry
- Traumatized
- Sad

### The future: Co-management of Sea Country

The lack of Indigenous participation and Sea Country degradation has a deep impact.

*'If you've got healthy seas, healthy waters, you've got healthy people. Healthy Yuin people'*  
– Wally Stewart.

The demand for more sustainable sea management practices is an opportunity for co-management between Traditional Owners and regulatory bodies on the South Coast. Co-management utilises the extensive experience and knowledge of Traditional Owners with western science to develop new solutions for new problems.

The collates conflicting ideas of sustainable practice to create best practice sea management. Presently, this conflict sees unfair targeting of customary fishing practices in New South Wales.<sup>2</sup> Three-quarters of interviewees reported knowing someone who had been prosecuted for cultural fishing. An Indigenous voice in marine management would increase wider awareness and understanding of customary fishing.

The project on the South Coast highlights the strong connection to waters, the ongoing practice of customary fishing, and the wealth of traditional expertise over Sea Country. This information can be used leverage future action, leading to both the protection

*It's our culture. We've looked after it for 40,000 years. We know how to manage it.*  
– Keith Nye.

of the right to practice culture, and more sustainable sea management with genuine Indigenous input.

<sup>1</sup> The National Oceans Office, *Sea Country: An Indigenous Perspective* (Regional Marine Plan Assessment Report, 2002) 1-196.

<sup>2</sup> Nicola Pain and Georgia Pick, 'Balancing Competing Interests in the Criminal Justice System: Aboriginal Fishing Rights in Coastal New South Wales' (2020) 43 *University of New South Wales Law Journal* 1383.



Keith Mason filling out survey. Mystery Bay, 2020. Photo: AIATSIS

# Takeaways from the *Native Title Legislation Amendment Act 2021 (Cth)*

By Michael O'Donnell and Mia Stone, AIATSIS

On the 3rd of February 2021, the *Native Title Legislation Amendment Bill 2019 (Cth)* passed both Houses of Parliament. Royal Assent occurred on 16 February 2021. Schedule 9 which deals with the validation of section 31 agreements commenced on 17 February 2021. Most of the remaining provisions commenced on 25 March 2021.

The *Native Title Legislation Amendment Act 2021 (Cth)* ('Act') makes changes to the *Native Title Act 1993 (Cth)* ('NTA'), the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)* ('CATSI Act') and will lead to changes to various regulations, including the *Native Title (Federal Court) Regulations 1998 (Cth)* and the *Native Title (Prescribed Body Corporate) Regulations 1999 (Cth)*.

Despite long-standing calls for reform from native title holders and native title representative bodies it was only in 2017 following the Full Federal Court decision in *McGlade v Native Title Registrar & Ors*<sup>1</sup> that the Commonwealth was moved to actively consider amendments to the NTA.

The Australian Law Reform Commission's major review of the law governing connection and authorisation was tabled in April 2015.<sup>2</sup>

The Amendment Act is largely technical, with only a couple of areas that could be described as being of significant benefit to native title holders. Nevertheless,

it introduces important reforms relating to the applicant and authorisation, and provides for an increase in the areas where native title can be recognised by disregarding historical extinguishment by agreement in National Parks.

It also validates section 31 agreements put into question by the *McGlade* decision and makes some changes to the CATSI Act and powers of the National Native Title Tribunal (NNTT). The provisions relating to applicant authorisation are intended to take effect 6 months after commencement to allow time for native title holders to consider whether they would like to make changes to the applicant's authority.<sup>3</sup>

## Applicants and authorisation

Authorisation is the process by which native title claimants authorise a person or group to make a native title or compensation application on their behalf, and is a critical part of the native title process.<sup>4</sup> The Act introduces reforms that allow a native title claimant or compensation group to impose conditions on the authority of an authorised applicant, put in place succession planning arrangements and in some cases change the composition of the applicant without further authorisation.<sup>5</sup> This would allow, for example, a group to put in place special conditions for making key decisions such as discontinuing a claim, or provide that a family member

replace a member of the applicant if they pass away. If there are no conditions, the applicant may act by majority.<sup>6</sup> In addition, the Act confirms the decision of the *Federal Court in Gebadi v Woosup (No 2)*<sup>7</sup> to the effect that the applicant owes fiduciary duties to the claim group. This means that members of the applicant must act in their best interests.

## Disregarding extinguishment

In *Mabo v Queensland (No 2)*<sup>8</sup> Brennan J suggested that native title would continue where use of the land is consistent with continuing concurrent enjoyment of native title, for example 'land set aside as a national park'.<sup>9</sup> Later cases, however, cast doubt over this view and found that native title was in fact extinguished under certain statutory frameworks where areas were set aside for conservation purposes.<sup>10</sup> The Act inserts a new s 47C which provides that extinguishment in these cases can be disregarded by agreement between the government and applicant. The Act also corrects a long-term problem with s 47 of the NTA by allowing Aboriginal corporations with members (rather than shareholders) to also benefit from the provision in s 47 to disregard extinguishment in relation to Aboriginal-owned pastoral leases.<sup>11</sup>

The various provisions in section 47 of the NTA are important beneficial provisions for native

title holders as native title can be recognised in significant additional areas in Australia where otherwise it had been extinguished.

### Section 31 agreements

In *McGlade*, the Federal Court decided that area Indigenous Land Use Agreements (ILUAs) needed to be signed by all members of a registered native title claimant in order to be registered and therefore validly affect native title. Parliament largely reversed this decision through the *Native Title Amendment (Indigenous Land Use Agreements) Act 2017* (Cth), however, the legislation did not address the validity of agreements made in similar circumstances under s 31 of the NTA (which deals with mining and the compulsory acquisition of native title). This Act confirms the validity of certain s 31 agreements, with retrospective application.<sup>12</sup> It also requires the National Native Title Tribunal (NNTT) to maintain a public record of s 31 agreements.<sup>13</sup>

The Parliamentary Joint Committee on Human Rights raised concerns that the retrospective application of the provision might contravene the right to culture as a result of the potential conflict between individual and group rights and interests.<sup>14</sup> Thousands of s 31 agreements have been concluded nationally, however, hundreds of which would likely require validation as a result of the *McGlade* decision. Section 31 agreements bring significant benefits to native title holders, and as a result, there was general unanimity that they should be validated despite concerns about the retrospective application of the provision.

### CATSI Act reforms

The Act introduces some limited reforms to the CATSI Act. These include restricting the ability of a Prescribed Body Corporate (PBC) to exclude membership to common law native title holders, which has been the subject of some concern.<sup>15</sup> The reforms also grant a new head of power to the Officer of the Registrar of Indigenous Corporations (ORIC) to place a PBC under special administration for serious or repeated failure to comply with native title obligations.<sup>16</sup> This reform was the subject of stakeholder concern. A broader set of reforms to the CATSI Act is currently being considered by the National Indigenous Australians Agency.<sup>17</sup>

### NNTT powers

The Act grants the NNTT new powers to provide assistance to PBCs upon request to promote agreement in relation to disputes over native title matters.<sup>18</sup> As many Native Title Representative Bodies (NTRBs) already perform a mediation role, it is unclear to what extent this alternative will be taken up in practice.

### Reforms not pursued

Indigenous submissions and lobbying has been for much broader changes to the native title system. Submissions made that were not taken up by government largely went to winding back some of the 1998 '10-point plan' amendments that diminished native title holder rights. They included extending the minimum negotiation period for future acts, allowing NNTT determinations to include the payment of royalties and providing that the right to negotiate apply where there is a diversification of activities on pastoral leases.

<sup>1</sup> [2017] FCAFC 10 ('*McGlade*').

<sup>2</sup> See the *Native Title Amendment Bill 2012* (Cth); Australian Law Reform Commission, *Connection to Country: Review of the Native Title Act 1993* (2015); Council of Australian Governments, *Investigation into Land Administration and Use* (2015); ORIC, *Technical Review of the CATSI Act* (2017).

<sup>3</sup> *Native Title Amendment Act 2021* (Cth) s 2.

<sup>4</sup> *Native Title Act 1993* (Cth) s 251B.

<sup>5</sup> See *Native Title Amendment Act 2021* (Cth) new ss 251BA, 66B(2A)-(2C).

<sup>6</sup> *Ibid*, new s 62C.

<sup>7</sup> [2017] FCA 1467.

<sup>8</sup> (1992) 175 CLR 1.

<sup>9</sup> *Ibid* 70.

<sup>10</sup> See, eg, *Western Australia v Ward* (2002) 213 CLR 1.

<sup>11</sup> *Native Title Amendment Act 2021* (Cth) s 18.

<sup>12</sup> *Ibid* sch 9 item 2.

<sup>13</sup> *Ibid* new s 41B.

<sup>14</sup> Parliamentary Joint Committee on Human Rights, *Parliament of Australia, Human Rights Scrutiny Report, Report 4 of 2020*, 142.

<sup>15</sup> *Native Title Amendment Act 2021* (Cth) pt 2.

<sup>16</sup> *Ibid* new s 487.5(1)(ca).

<sup>17</sup> National Indigenous Australians Agency, 'Final Report: CATSI Act Review' (Report, 30 October 2020).

<sup>18</sup> *Native Title Amendment Act 2021* (Cth) new s 60AAA

#### What do I need to do?

For native title holders and practitioners:

- Consider whether you would like to set conditions on the applicant's authority
- Think about planning for the future (succession planning)
- Make sure s 31 agreements continue to be signed by all members of the registered native title claimant until the changes take effect
- Include any conditions on applicant authorisation in the Form 1 as well as any affidavits and NTRB certifications – if there are none, state that there are no conditions
- If there is an existing Form 1 it must be amended
- NTRBs will need to amend Corporation rules within 2 years of commencement of these provisions



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National  
Native Title  
Council

# The 2019 PBC survey

By **Christiane Keller, AIATSIS**

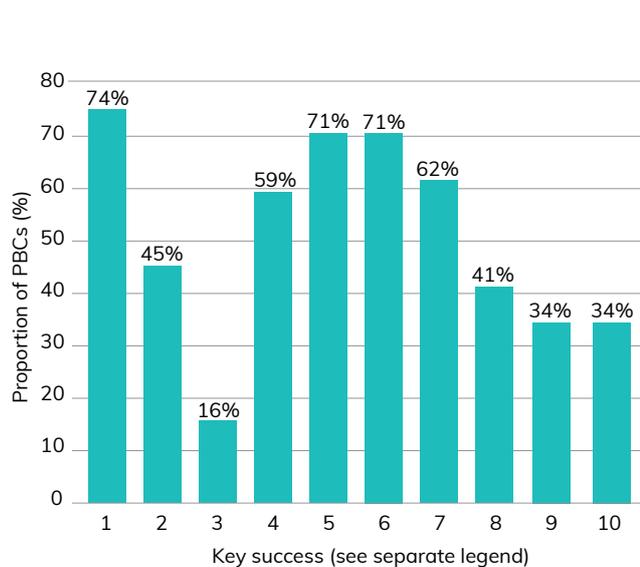
The 2019 Prescribed Bodies Corporate (PBC) survey continues AIATSIS research into the aspirations and activities of PBCs and identifies existing barriers to the effective operation of native title organisations.

Surveys like these are a valuable tool to track PBC's accomplishments over time. PBCs responding to the survey registered successes and achievements despite often having little resourcing and primarily relying on the voluntary labour of their directors and members. When asked for the three most important purposes for a PBC, 83% of respondents considered fulfilling their native title obligations and 81% looking after and managing

Country as their most important purposes. When asked for their key areas of success, over 70% of PBCs rated the categories - fulfilling native title obligations (74%) and looking after and strengthening Country (71%) — as key areas. This demonstrates that they accomplish what they consider their core business.

Strengthening culture was considered by 62% of respondents as the third most important purpose for PBCs.

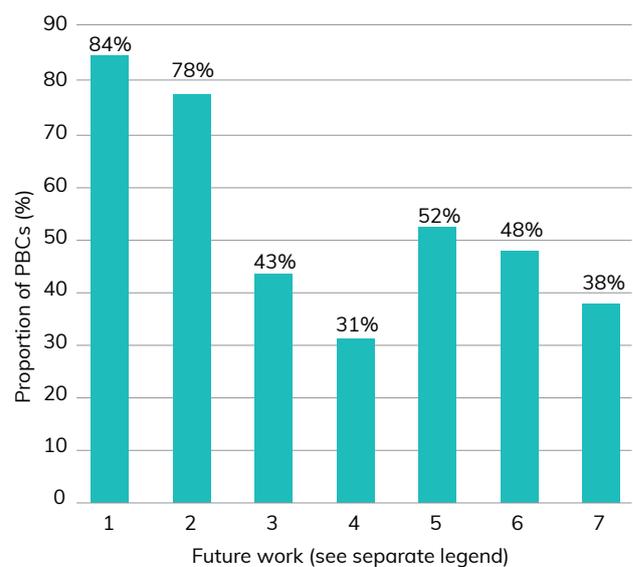
**Graph 1: Key areas of success that PBCs have had in the past five years**



**Legend: Key area of success**

1. Meeting its obligations under the Act
2. Winning a determination
3. Mounting a new claim
4. Bringing people together
5. Improving governance
6. Looking after Country
7. Strengthening culture
8. Creating new business and employment
9. Providing education and training
10. Managing non-Indigenous activities on Country

**Graph 2: Types of work that PBCs want to or plan to do in the next five years**



**Legend: Type of work**

1. Cultural services (including cultural heritage, cultural programs, art production)
2. Environmental services (land and sea management, carbon, biodiversity)
3. Farming and fishing (including pastoralism, agriculture, aquaculture, horticulture, forestry, bush food development)
4. Mining, transport and construction services
5. Hospitality services (including tourism, accommodation, catering, and retail)
6. Social services (including housing, employment, community, and educational services)
7. Financial services and investments

When asked about their aspirations for the next five years, 84% wanted to offer more cultural services (including cultural heritage, cultural programs, art production) and 78% would like to carry out more environmental services (including land and sea management, carbon farming and biodiversity maintenance). Again PBCs aspirations correspond with what they consider their core business.

Tracking progress and highlighting successes is invaluable for PBCs themselves. The survey provides PBCs with a voice to tell the broader sector and particularly government and research institutions about their aspirations and how they can best support them in achieving their goals.

Following on from earlier surveys (2013 and a draft survey in 2017) AIATSIS, CSIRO and the National Native Title Council (NNTC) teamed up to redesign the PBC survey to encourage participation and ensure PBC voices are heard. The 2019 survey was an incentive-based approach where PBCs had the chance to win full sponsorship to attend the AIATSIS Summit. Furthermore, the survey was administered with a combination of online platform and in-person for PBCs to discuss and complete the survey. NNTC staff, supported by AIATSIS, contacted PBCs to encourage and guide them through the survey process. Allowing enough time for PBCs to respond resulted in

58 PBCs filling in the survey and meeting key sample targets for variations in both jurisdictional spread and PBC size.

To find out more about the main topics of the survey, the analysis of results and the 12 key recommendations read the [Report on the 2019 Survey of Prescribed Bodies Corporate \(PBCs\)](#).

AIATSIS, CSIRO and NNTC are aiming to repeat the survey every 3 years. The focus of the next survey will depend on developments in the sector and feedback on how to make it relevant and useful for all involved.

**Thank you for participating in the survey!**



Mangarrayi Country. Photo: Marcus Barber, CSIRO.

# Developing a national strategy for native title compensation

By Mia Stone, AIATSIS

The idea behind a national native title compensation strategy is to develop a coordinated and properly resourced strategic approach to the resolution of compensation claims. This will help to prevent the unnecessary and ad-hoc litigation by which native title determination applications have been resolved over the past 30 years.

The need for a national compensation strategy became evident after the Federal Court ruling in *Griffiths v Northern Territory of Australia (No 3)*<sup>1</sup> and subsequent High Court decision in 2019.<sup>2</sup> In *Griffiths*, the Ngaliwurru and Nungali peoples were awarded \$2,530,350 for economic and cultural loss suffered as a result of the Northern Territory government's actions in granting freehold title and pastoral leases and building infrastructure on their land. This was the first time the courts had made a ruling on the compensation provisions in the *Native Title Act 1993 (Cth)* (NTA), and how compensation might be calculated. Nevertheless, the decision was just the beginning of what some commentators have heralded the 'new era' in native title,<sup>3</sup> and many unanswered questions remain.

A coordinated focus on well-prepared claims consolidating outcomes from *Griffiths* and testing new issues will preserve resources for negotiated settlements. This will ensure money is better spent on building partnerships and allowing Prescribed Bodies Corporate

(PBCs) to pursue economic, social and cultural developments for the benefit of their communities and the nation as a whole.

The strategy has been drafted by the National Native Title Council (NNTC) with support from member and non-member Native Title Representative Bodies and Service Providers (NTRB/SPs) and PBCs, as well as funding from the federal government. There is also broad support for the development of a national strategy among the Federal Court, minerals industry (through the Mining Council of Australia) and some state and territory governments. A Senior Officers Compensation Working Group has been established, comprising senior officers from federal, state and territory government departments involved in native title as well as the NNTC. The group will be meeting quarterly to discuss the strategy and broader issues of native title compensation.

## Elements of the strategy

The strategy is comprised of seven sub-elements: streamlining litigation, identifying test case issues, increasing the capability of NTRB/SPs, developing best practice models for negotiated comprehensive settlements, ongoing education and capacity-building, stakeholder engagement and communication. Three of these elements are discussed in more detail below.

### Streamlining litigation

The strategy seeks to explore a number of changes to assist the streamlining of native title compensation claims. These include simplified processes for accessing land tenure data, clarification about how section 86 of the NTA can be used to incorporate evidence and decisions from previous judgments (for example, determination judgments) to reduce and refine the issues at hand, circumstances in which the Federal Court might accept the existence of native title for the purposes of section 13(2) of the NTA if it were uncontroversial (for example where a group has a determination for surrounding and contiguous areas), options for preservation of evidence and the possibility of referral of specific questions of law to the Full Federal Court.

### Identifying test case issues

Many governments are reluctant to commence comprehensive settlement agreement negotiations while the jurisprudence on compensation remains murky. The resolution of outstanding legal issues through select test cases is therefore crucial as a matter of practice to establishing negotiated settlement agreements as the norm. Some of the issues that require adjudication include the effect on quantum of the kind of native title rights and interests (exclusive or non-exclusive) and the purposes for which rights and interests can be



exercised (commercial or non-commercial). In addition, it is unclear what impact Indigenous Land Use Agreements (ILUAs) and agreements under s 31 of the NTA might have on compensation, whether a loss of the right to negotiate attracts compensation, and whether compensation is payable in cases of compulsory acquisition after 1975 (when the *Racial Discrimination Act 1975* (Cth) came into effect). Furthermore, although touched on in *Griffiths*, the principles for determining cultural loss are still unclear. Many of these outstanding legal issues are likely to be addressed in cases currently being prepared by the Northern Land Council, Central Desert Native Title Services and others.

These include the Tjiwarl and Gibson Desert claims and the McArthur River claim. Some questions will inevitably be resolved differently in different state and territory jurisdictions, however, due to the applicability of different legal regimes.

#### **Developing best practice models for negotiated comprehensive settlements**

At its highest, the national native title compensation strategy aims to move compensation out of the courts and into the negotiated settlement arena as efficiently as possible. A comprehensive settlement can build a foundation for a PBC to pursue cultural, social, economic and political aspirations, build

relationships with governments at all levels and develop strong regional governance structures. The NNTC is collaborating with AIATSIS to develop best practice guidelines for negotiated settlements. These guidelines will look creatively at how compensation can go beyond lump sum payments to substantive outcomes that in fact address the harms caused and establish processes to prevent future harms.

<sup>1</sup> [2016] FCA 900.

<sup>2</sup> *Northern Territory v Griffiths* [2019] HCA 7 ('*Griffiths*').

<sup>3</sup> 'Historic Ruling Opens New Native Title Era', *The Sydney Morning Herald* (19 March 2019), <https://www.smh.com.au/national/historic-ruling-opens-new-native-title-era-20190319-p515i9.html>.



If you are a native title practitioner or researcher and would like to contribute to the on-going native title podcast series, please contact the [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au)

## First Glance: Native title podcast

By Dora Bowles, Wiradjuri,  
AIATSIS

*A lot of people don't understand native title... but they do understand Country.*  
– Wynston Shovellor-Sesar

Native title is often perceived as a technical and legal process that is far removed from the majority of Australia and largely inaccessible from a conceptual, social and policy perspective. Native title is a translation of Indigenous laws and customs and is at the intersection of a property and intellectual law system, access to resources and the control of community livelihoods amongst many other things. As a compromise and poor reflection of Indigenous connections to Country, native title can easily be confusing.

AIATSIS recently recorded an interview with Dr Virginia Marshall, a Wiradjuri woman, on her book, *Overturning Aquanullius: Securing Aboriginal Water Rights*.<sup>1</sup> Dr Marshall's research is deeply focused on the state of First Nations' water rights and the ability of our legal framework to recognise these rights. In the interview we discussed the current state of water legislation and policy, including the National Water Initiative and the Murray-Darling Basin Plan.

In the interview, Dr Marshall called attention to how water policy has the potential to make a practical difference in the everyday lives of First Nations' people - if done right. The interview will become a podcast that provides an explanation of water rights, policy and legislation and demystifies some of the complexities of the Australian water system. Her interview offers insight and expertise to the intensifying politics of water.

As a part of the planned podcast series, AIATSIS also spoke to Emeritus Professor Nicolas Peterson. As the director of the National Centre for Native Title Anthropology, Professor Peterson broke down the often complicated role of anthropologists in native title claims. In the interview he shared his perspective on the relationship between claimants and anthropologists and the potential future of the discipline in the native title space.

The Native Title Research Unit (NTRU) has been producing a podcast series on emergent issues and reflections on both the technical and the lived processes of native title. This series is intended to act as easily-accessible online seminars on topical issues in the native title sector. The podcast is a series of interviews with practitioners working in native title and Aboriginal and Torres Strait Islander policy. We touch on areas including: the Australian First Nations' economy, land management, return of native title materials and what it takes to run a PBC. The interviews with Dr Marshall and Professor Peterson are just two of the discussions to be released as a part of the podcast series.

<sup>1</sup> Marshall, V 2017, *Overturning Aquanullius: Securing Aboriginal Water Rights*, Aboriginal Studies Press, Canberra.

# Land claim and native title archives survey

By **Christiane Keller,**  
**AIATSIS**

AIATSIS conducted a survey from 17 December 2020 to 1 February 2021 to gauge the amount, nature and state of materials held in private archives of land and native title claim practitioners. The survey is part of the *Land rights in the Northern Territory: Documenting the records and memories case study of the Returning native title materials project*. The case study aims to return control of appropriate materials, held in those archives, back into the hands of the relevant Aboriginal and Torres Strait Islander communities.

The survey was sent directly to known practitioners from the Northern Territory land claims era, which started in the 1970s. It was advertised on native title practitioner networks and via the AIATSIS and PBC websites to include archives covering native title claims starting in the early 1990s.

54 practitioners responded and completed the survey in part or fully. Of the respondents, five worked on Northern Territory land claims before 1976, 30 worked during the 1976–1985 period, and 34 respondents worked on land claims and native title claims from 1986–1996. These periods were chosen to capture the most vulnerable materials.



## Time is of the essence

The survey results highlight that time is of the essence for both the materials themselves and the practitioners who recorded them, to engage with the issues around the considerable volume of materials currently not accessible.

Because of the age, in some cases over 40 years, and the outdated technical formats of materials, these research collections are vulnerable and at high risk of being damaged or becoming indecipherable. Particularly all magnetic tape materials that has not been digitised are at risk irretrievably lost by 2025.

The memories of now aged claimants and practitioners have often diminished with the passing of time. Some memories are lost as people have passed on.

Furthermore, if materials are left in the estates of archive holders they are at risk of not being identified as invaluable to Aboriginal and Torres Strait Islander communities, and might be discarded.

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*The memories and documents are more valuable while we are alive than after we have gone, adding narrative makes it much more valuable than if someone looks at it afterwards without the narrative...*

*We as a generation were privileged to hear stories from people who hadn't written stories down for 60,000 years...In 5–10 years it won't be available anymore, because we [may not] won't be here.*  
– Professor Michael Dodson AM

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## Some data on the archives

The survey established that 82% of the respondents have materials stored at home. Where there was insufficient space 16% found off site storage. Other storage locations included work offices, libraries, land councils and other organisations involved in land claim work.

Many of the archives are at various stages of documentation.

12 respondents have not documented their archives at all, 5 documented some (25%), 3 established the content of half (50%) their collections, 4 documented most (75%) and only 5 have a clear picture of the entire content of their holdings.

The volume of hardcopy materials also varies greatly, with 23 respondents holding 1–10 archive boxes, 8 holding 10–20 boxes, 6 store 20–50 boxes, and 6 have large archives of more than 50 boxes. Similarly, varied is the volume of digital archives.

The archives include anthropological, linguistic, historical, archaeological and legal research documents, field notes, photographs, audio-visual recordings, drafts of genealogies

and maps, cassette tapes and a range of other media. Most of the survey respondents hold vulnerable materials (see Graph 2) and 11% are unsure, but 73% know that their collections contain materials they hold the only copy of.

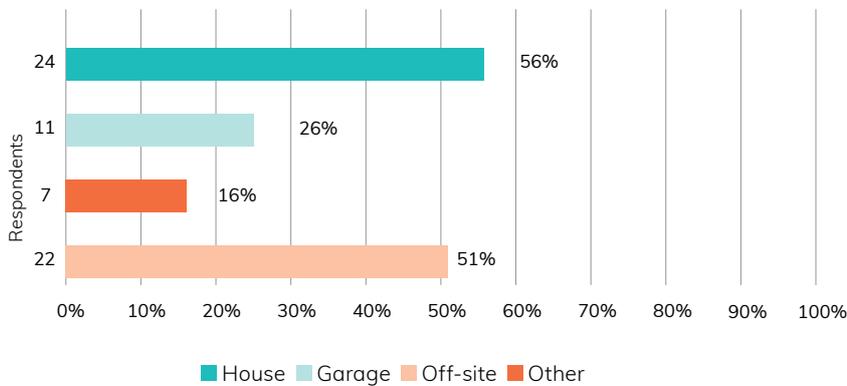
The survey data clearly demonstrates that there are great volumes of archives that are not accounted for or documented. There is a great urgency to make progress in documenting these archives and make them available. The Northern Territory land claim case study is working on progress by:

- securing support to ensure the safety, preservation and documentation of land claim materials

- encouraging practitioners to begin preparing a record of their own materials
- working towards new approaches to cataloguing, digitising and managing returns to enable and facilitate appropriate access
- recording and publishing practitioner and claimant memories.

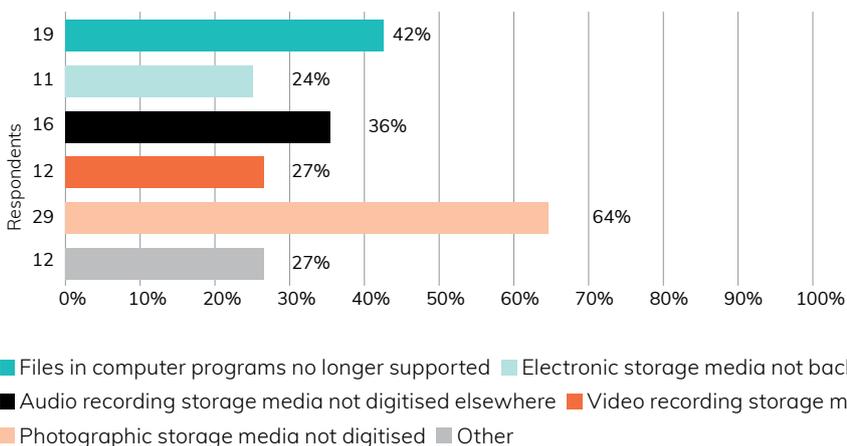
A [do-it-yourself guide](#) and template for archive holders to begin preparing their collections for potential depositing and returning to Aboriginal and Torres Strait Islander communities is now available.

**Graph 1: What type or storage do you use for your archive?**



	Responses	Percentage
I do not have a digital archive	12	26%
Fewer than 100 files	3	7%
100–200 files	6	13%
200–500 files	4	9%
500–1000 files	4	9%
more than 1000 files	17	37%

**Graph 2: What types of vulnerable materials do you hold?**



*I feel very strongly that the descendants of the claimant involved should be able to access these materials in the future. This has implications for: the form in which the archive exists; how well it is archived and indexed; and what kind of institution is the most appropriate holder.*  
– Survey respondent

- Files in computer programs no longer supported
- Electronic storage media not backed up elsewhere
- Audio recording storage media not digitised elsewhere
- Video recording storage media not digitised elsewhere
- Photographic storage media not digitised
- Other

# National First Peoples' Gathering on Climate Change

By Levi Lee, Biripi, and Mia Stone, AIATSIS

The Earth Systems and Climate Change (ESCC) Hub of the Australian Government's National Environmental Science Program (NESP) together with the First Peoples Partners, hosted the National First Peoples Gathering on Climate Change in Cairns QLD in March. The 2021 Gathering's theme is 'catastrophic extreme weather events: a changing world'. It's vital to discuss how climate change and high impact weather events like cyclones, heatwaves and bushfires, are affecting Country and cultural activities. Events of this nature provide First peoples an opportunity to set their own agenda with regard to climate change.

The National Gathering was held in Cairns on the traditional lands of the Gimuy Walubara Yidinji and Yirrganydji Peoples. A Host Community Working Group together with Gimuy Walubara Yidinji and Yirrganydji Peoples was established to ensure all cultural protocols are upheld and up-to-date. The hub engaged a 12-member steering committee that included a broader representation of First Nations communities from across Australia to lead the development of Gathering. To continue the First Nations-led and co-design processes from



the 2018 Gathering, organisers aimed to "Celebrate, Learn from and Enhance" First Peoples-led climate change action. It provided participants with valuable and worthwhile information which can then be taken back First Nations Communities across Australia.

Where Indigenous groups are mentioned, it is usually in the context of a discourse of vulnerability which paints Indigenous communities as passive victims of climate change. Traditional Owners' position as important landholders and holders of ancient knowledge putting them in a strong position to contribute enormously to Australia's energy transition. Aboriginal and Torres Strait Islander people are already making significant contributions to combat climate change in Australia, and are exemplars in clean energy implementation and carbon abatement. The recent construction of solar farms in six Kimberley communities is generating both environmental and economic benefits for remote communities, with power savings able to be injected back into community projects.

During the gathering several yarning sessions were run, surrounding relevant themes like: marine heat waves, cyclones,

rising sea levels and extreme water events. During these sessions, the group heard from Andrew Dowdy, a Senior Research Scientist, and Djarra Delaney, a Quandamooka man, whose works surrounds Indigenous water knowledge and climate change. Together, they presented to the group on bushfires intensifying and the affects that could have on Country; both working within the Bureau of Meteorology on various projects to reduce bushfires and natural hazards. Their yarning session is just one of the great examples of co-design at the event and how that may lead us forward in a rapidly changing world.

Increasingly, climate change is impacting our everyday lives with changing water availability, rising sea levels and temperatures. Gatherings like these are important, as they provide a platform for Traditional Owners to listen, learn, share and set their own agenda. Participants heard from Traditional Owners and research scientists, affording guests with a rare opportunity to utilise both Indigenous and scientific knowledge. This provided attendees with tools to spread the tangible information shared, with the wider First Nations community.

# Culture in practice: Using the AIATSIS archives to maintain native title rights and interests

By Kieren Murray, Wiradjuri, AIATSIS and Wynston Shoveller, Karajarri Traditional Owner

AIATSIS currently hold a large collection of information relating to Indigenous communities around Australia. The collection covers diverse areas of cultural knowledge including languages, songs, ceremonies in addition to community and personal histories. The collection is largely built from materials generated from its research grants – which has supported critical research in Indigenous law and policy – including funding for Eddie Koiki Mabo’s original cultural mapping on Mer. These materials are deposited or donated to AIATSIS which is now working to ensure materials are returned to communities where they belong.

One of the benefits of the AIATSIS collection has been the ability for Indigenous communities to use it as a knowledge base when researching for land and native title claims - which has been achieved in a vast number of communities around the country. Within this post-determination context, the focus has now shifted toward maintaining and benefiting from the rights and interests that are attached to a positive determination of native title. The aforementioned collection of materials and the infrastructure surrounding it can then be used to assist with cultural strengthening and resurgence.

An example of the AIATSIS archives being used for this purpose occurred in partnership with the Karajarri People, who are from the Kimberley region in Western Australia. The Karajarri People were the beneficiaries of a decision that gave them exclusive possession over 32,000 square kilometres of previously unallocated crown land. Stemming from this, Karajarri entered into an Indigenous Protection Agreement (IPA), giving them greater control over the protection and continued maintenance of their land.



This was in part implemented through the introduction of various ranger programs across their respective lands.

With assistance from AIATSIS through the Preserve, Strengthen, Renew Project, the Karajarri People in partnership with Environmental System Solution set up a Digital Database. This was designed to assist the facilitation of the IPA through tracking and managing the programs and ranger project. The database also acts as an archive for the collection of cultural materials that can be drawn on to strengthen the practice of their culture as well as safeguard their cultural information for future generations. Having the technological infrastructure in place to store and share this information will ensure knowledge is kept in the right hands, promoting cultural resurgence.

Given the amount of information AIATSIS has in its archives and the infrastructure that has been built around it, it's encouraging that it can now be used to assist Indigenous Peoples to make the most of the rights and interests that come after native title is recognised in the courts. The future of cultural knowledge and the intersection of data sovereignty and intellectual property will continue to have emergent challenges. But with challenges come opportunities if we're brave enough to put ourselves at the front of the pack. If an organisation like AIATSIS keeps Traditional Owners and their rights to their materials and information – their data sovereignty – at the front of our approach, we can hopefully assist Traditional Owners to rebuild their knowledge and ensure it remains in their hands.



# Quandamooka Yoolooburrabee Registered Native Title Body Corporate – Native Title Youth Engagement, Indigenous Youth in Governance and Political Processes Project

By Peter Bligh, Wakka Wakka/Kullilli, AIATSIS and Dr Valerie Cooms, Quandamooka

In February 2021 Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) agreed to work with AIATSIS on Minjerribah (North Stradbroke Island) in Queensland. The aim of the project was to examine the engagement of QYAC youth in native title and within QYAC.

QYAC took AIATSIS staff on Country with a group of younger QYAC Rangers. Following this, a range of formal and informal interviews and discussions were held and particularly in relation to their thoughts on Native Title. All of the people interviewed noted

they wanted to learn more about how the native title process works.

2021 will mark the 10 year anniversary of the first native title Determination and will also highlight the work done to engage Aboriginal youth. The partnership is part of AIATSIS' Indigenous Youth in Governance and Political Processes research work.

Some of the ways in which Quandamooka youth participate in native title processes are:

- Participating in caring for Country programs across Quandamooka lands and waters<sup>1</sup>
- Learning about and working within business
- Learning about and working within administration
- Learning about and participating in tourism on their terms as Traditional Owners
- Learning and understanding the Queensland Cultural Heritage legislation
- Learning and understanding the Native Title Act including negotiation
- Gaining more skills via staff development and training programs.

Left to right: Dr Valerie Cooms, speaking to Jacob Martin, Lordie Walker and Patrick Coolwell, Minjerribah (North Stradbroke Island) February 2021. Photo: Trea Mongta

With youth participation across so much of QYAC activities, QYAC has to understand the types of decisions that have to be made, who makes those decisions and how this happens within their own teams and workplace. These decisions are made all of the time by Quandamooka Rangers in a well-informed and supportive environment under the guidance and supervision of Elders.

Many of the Rangers are keen to learn about the governance of QYAC which enhances their capacity as Members. Youth guidance and experience across many areas has seen many community members take their place as Leaders. The organisation's focus on generating income to provide jobs has created an interesting range of opportunities for Quandamooka youth. The team building experiences combined with QYAC's support before and after incarceration is a crucial part of ensuring people are given opportunities to become responsible leaders within the community, despite obstacles and challenges. Everyone in the community watches the work that the rangers do and focus on how they conduct themselves. This ensures that the rangers gain confident leadership skills in a culturally safe and respectful environment. The relationships they have formed as team members and co-workers across various families will carry through into future generations.

AIATSIS first reached out to QYAC in 2020 for a comparative example of how to engage Youth in Native Title. AIATSIS conducted interviews with Quandamooka Land and Sea Management Agency (QALSMA) Rangers. (AIATSIS has agreed to provide copies of interviews

and other footage to hold in its collection, and copies for individual interviewees subject to the wishes of the project participants).

The Quandamooka Land and Sea Management Agency (QALSMA) is the Unit within QYAC responsible for the planning, management and protection of the Quandamooka Estate. The QALSMA Ranger team consists mostly of Young Quandamooka people. The Quandamooka Rangers are a valuable asset firstly because they are connected to most families on the islands, and, they are fulfilling an important role in caring for Country. The opportunity ensures rangers continue to gain skills to enhance their ability to effectively care for Quandamooka lands and waters.

Key impacts of the Ranger program include:

- Caring for Country
- Respect and recognition for leadership in work and knowledge
- QALSMA staff represent young people across all of the families on the Island.

During the interviews some of the Rangers spoke about boredom and substance abuse and how working on Country was able to not only gain the opportunity for them to provide economically for their families, but to also set an example for others.

QYAC is the largest land holder, accommodation provider and employer on Minjerribah (North Stradbroke Island). Prior to Native Title the main form of income was from tourism or mineral extraction. Now, caring for Country, and particularly Traditional Fire Management processes, brings funding into

QYAC to employ Traditional Owners. Our young rangers' hard work during fire prevention or fighting is second to none. It makes everyone proud to see them 'stepping up' to care for people and Country working long hours with everyone proud of their performance, commitment and professionalism. This provides a climate within which leaders can emerge quickly and confidently and are a valuable asset not only in the workplace but within families and our community as well.

We can label the investment in our youth as 'justice reinvestment' or 'succession planning' but it is simply providing an opportunity for our emerging leaders to learn as much from their Elders as possible to carry on the policy of QYAC which is to primarily focus on securing land and waters, as well as creating jobs for Quandamooka people.

**Oodgeroo or Kath Walker's poem  
A Song of Hope:**

**To our Father's Fathers the  
pain the sorrow;**

**To our children's children a  
glad tomorrow.**

QYAC will continue to ensure our children's children have a 'glad tomorrow'.

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*It has been an honour to watch our staff develop into strong community leaders, and we thank AIATSIS for the opportunity to capture this in its research.*

*– Dr Valerie Cooms.*

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<sup>1</sup> This includes Fire Management.



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