

***Not so ‘fragile’ –
the evolving character of
native title, 1993 to 2018***

By the Hon. Justice Michael Barker

Federal Court of Australia



Mabo 1992 HCA

Yorta Yorta 2002 HCA

Ward 1998 Lee J; 2000 Full Court; 2002 HCA



De Rose 2005 Full Court

Wik 1996 HCA

Brown 2014 HCA



Yarmirr 1998 Olney J; 1999 Full Court; 2001 HCA

Akiba 2010 Finn J; 2012 Full Court; 2013 HCA

Pilki 2014 North J; 2015 Full Court



Determinations of non-exclusive
possession native title

Determinations of exclusive
possession native title



Compensation

Griffiths 2016 Mansfield J



Comprehensive agreements



The future?



Consent determinations



Mary-Lou Buck v State of New South Wales & Ors	07/04/1997
Erica Deeral (On behalf of herself & the Gamaay Peoples) & Ors v Gordon Charlie & Ors	08/12/1997
Western Yalanji or "Sunset" Peoples v Alan & Karen Pedersen & Ors	28/09/1998
Mualgal People v State of Queensland	12/02/1999
Saibai People v State of Queensland & Ors	12/02/1999
Dauan People v State of Queensland	06/07/2000
Mabuiag People v State of Queensland	06/07/2000
Masig People v State of Queensland	07/07/2000
Poruma People v State of Queensland	07/07/2000
Warraber People v State of Queensland & Ors	07/07/2000
Clarrie Smith & Ors on behalf of the Nharnuwangga, Wajarri and Ngarla People v the State of Western Australia & Ors	29/08/2000
Wik Peoples v State of Queensland	03/10/2000
Mark Anderson on behalf of the Spinifex People v State of Western Australia	28/11/2000
Billy Wasaga & Ors on behalf of the Kaurareg People v State of Queensland & Ors	23/05/2001
Andrew Passi on behalf of the Meriam People v State of Queensland	14/06/2001
Bar-Barrum People v State of Queensland & Ors	28/06/2001
Palmer Gordon Ngapil & Others v The Premier & State of Western Australia & Ors	20/08/2001
Brown v State of Western Australia	19/10/2001
Kelly v NSW Aboriginal Land Council	23/10/2001
John Dudu Nangkiriny & Ors on behalf of the Karajarri People v The State of Western Australia & Ors	12/02/2002
Jeffrey James & Ors on behalf of the Martu People v The State of Western Australia & Ors	27/09/2002
Attorney-General of the Northern Territory v Ward	09/12/2003
Nangkiriny v State of Western Australia	08/09/2004
Wik Peoples v State of Queensland	13/10/2004
Warria on behalf of the Kulkalgal v State of Queensland	07/12/2004
Mye on behalf of the Erubam Le v State of Queensland	08/12/2004
Stephen on behalf of the Ugar People v State of Queensland	09/12/2004
Gihuma on behalf of the Boigu People v State of Queensland	10/12/2004



Ngaanyatjarra Lands v The State of Western Australia & Ors	03/06/2008
Birriliburu People v The State of Western Australia & Ors	20/06/2008
Wangkangurru/Yarluyandi and Irrwanyere Mt Dare Native Title Claim Groups v The State of South Australia	11/09/2008
Leslie Hayes & Ors on behalf of the Thalanyji People v The State of Western Australia & Ors	18/09/2008
Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland	09/12/2008
Adnyamathanha No. 1 Native Title Claim Group v The State of South Australia (No. 2)	30/03/2009
Hunter v State of Western Australia	11/06/2009
Kuuku Ya'u People v State of Queensland	25/06/2009
Wik and Wik Way Native Title Claim Group v State of Queensland	29/07/2009
Wilson v Northern Territory of Australia	31/07/2009
Ampetyane v Northern Territory of Australia	07/08/2009
Kowanyama People v State of Queensland	22/10/2009
Thudgari People v State of Western Australia	18/11/2009
Girramay People v State of Queensland	10/12/2009
Combined Dulabed Malanbarra Yidinji People v State of Queensland	17/12/2009
Gangalidda and Garawa People v State of Queensland	23/06/2010
Rex on behalf of the Akwerlpe-Waake, Iliyarne, Lyentyawel Ileparranem and Arrawatyen People v Northern Territory of Australia	07/09/2010
Cashmere on behalf of the Jirrbal People #1 v State of Queensland	08/10/2010
Cashmere on behalf of the Jirrbal People #2 v State of Queensland	08/10/2010
Cashmere on behalf of the Jirrbal People #3 v State of Queensland	08/10/2010
Mullett on behalf of the Gunai/Kurnai People v State of Victoria	22/10/2010
Nelson v Northern Territory of Australia	08/12/2010
Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn Landholding Groups v Northern Territory of Australia	05/05/2011
Lennon on behalf of the Antakirinja Matu-Yankunytjatjara Native Title Claim Group v The State of South Australia	11/05/2011
Goonack v State of Western Australia	23/05/2011
VB (Deceased) v State of Western Australia	26/05/2011



Roberts on behalf of the Najig and the Guyanggan Nganawirdbird Groups v Northern Territory of Australia (No 3)	20/03/2012
Roberts on behalf of the Najig and the Guyanggan Nganawirdbird Groups v Northern Territory of Australia	21/03/2012
Lander v State of South Australia	01/05/2012
Dodd v State of South Australia	22/05/2012
Hunter & Ors v State of Western Australia	25/05/2012
Kearns on behalf of the Gunggari People #2 v State of Queensland	22/06/2012
Albert v Northern Territory of Australia	27/06/2012
Ellaga v Northern Territory of Australia	27/06/2012
Jackson v Northern Territory of Australia	27/06/2012
Wavehill v Northern Territory of Australia	27/06/2012
Hoolihan on behalf of the Gugu Badhun People #2 v State of Queensland	01/08/2012
Archer on behalf of the Djungan People v State of Queensland [Djungan People #1]	02/08/2012
Archer on behalf of the Djungan People v State of Queensland [Djungan People #2]	02/08/2012
Archer on behalf of the Djungan People v State of Queensland [Djungan People #3]	02/08/2012
Archer on behalf of the Djungan People v State of Queensland [Djungan People #4]	02/08/2012
Ilperrelhelam, Malarrarr, Nwerrarr, Meyt, Itnwerrengayt and Ampwertety Landholding Groups v Northern Territory of Australia	15/08/2012
Aplin on behalf of the Pitta Pitta People v State of Queensland	28/08/2012
Mundraby & Ors on behalf of the Combined Mandingalbay Yidinji - Gunggandji Claim v State of Queensland	21/09/2012
Inkamala v Northern Territory of Australia	25/09/2012
McLennan on behalf of the Jangga People v State of Queensland	09/10/2012
Wik and Wik Way Native Title Claim Group v State of Queensland	11/10/2012
Hughes and Ors on behalf of the Eastern Guruma People v State of Western Australia	20/11/2012
Murphy on behalf of the Jinibara People v State of Queensland	20/11/2012
Kogolo v State of Western Australia (No 3)	27/11/2012
May v State of Western Australia	27/11/2012
Puenmora v State of Western Australia	27/11/2012



Brown v Northern Territory of Australia	29/10/2013
Johns v Northern Territory of Australia	29/10/2013
Largut v Northern Territory of Australia	29/10/2013
Morgan v Northern Territory of Australia	29/10/2013
Wavehill v Northern Territory of Australia	29/10/2013
Fulton v Northern Territory of Australia	31/10/2013
Tonson v Northern Territory of Australia	31/10/2013
Stephen Brooks & Ors on behalf of the Mamu People v State of Queensland & Ors	01/11/2013
Barry Fisher & Ors on behalf of the Ewamian People #2 v State of Queensland & Ors	26/11/2013
Barry Fisher & Ors on behalf of the Ewamian People #3 v State of Queensland & Ors	26/11/2013
Bandjalang People #1 v Attorney General of New South Wales	02/12/2013
Bandjalang People #2 v Attorney General of New South Wales	02/12/2013
Far West Coast Native Title Claim and The State of South Australia & Ors (Far West Coast)	05/12/2013
Vincent Coulthard and Ors and Edward Lander and Ors v State of South Australia & Ors	25/02/2014
Vincent Coulthard and Ors v State of South Australia & Ors	25/02/2014
Dieri No. 2 Native Title Claim and State of South Australia	26/02/2014
Claudette Albert (on behalf of the Jalajirpa Group, the Walanyja Group and the Karrkarrkuwaja (Kalkalkuwaja) Group v Northern Territory of Australia & Ors	06/03/2014
Yijiparta, Gurungu/Kulumintini and Warranangku Estate Groups v Northern Territory of Australia & Ors	06/03/2014
Morrison v Northern Territory of Australia	06/03/2014
Kunakiji (Snake) and Lukkurnu (Star) Group, the Kurtinja (Turkey) Group and the Jampijinpa/Jangala-Kunapa Group) v Northern Territory of Australia	06/03/2014
Karrkarrkuwaja (Kalkalkuwaja) Group, the Mangurinja Group and the Kujuluwa Group v Northern Territory of Australia & Ors	06/03/2014
Karrkarrkuwaja (Kalkalkuwaja) Group, the Jukutayi Palyarinji Group, the Walanyja Group and the Kurtinja Group v Northern Territory of Australia & Ors	06/03/2014
Gulunurru (Anderson) Group and the Purrukwarra Group V Northern Territory of Australia	06/03/2014
Bullen on behalf of the Esperance Nyungar People v State of Western Australia	14/03/2014
Gudjala People Core Country Claim #1 v State of Queensland & Ors	18/03/2014



Taylor on behalf of the Gangalidda and Garawa Peoples #1 v State of Queensland	01/04/2015
Taylor on behalf of the Gangalidda and Garawa Peoples #2 v State of Queensland	01/04/2015
Phillip Wallis & Ors On Behalf Of The Wuthathi, Kuuku Ya'u & Northern Kaanju Peoples	28/04/2015
Johnson Chippendale & Ors On Behalf Of The Wuthathi People #2	29/04/2015
Barkandji Traditional Owners #8 v Attorney-General of New South Wales	16/06/2015
Lampton on behalf of the Juru People v State of Queensland	22/06/2015
McKellar on behalf of the Budjiti People v State of Queensland	23/06/2015
Wallace on behalf of the Boonthamurra People v State of Queensland	25/06/2015
Yaegl People #1 v Attorney-General of New South Wales	25/06/2015
Yaegl People #2 v Attorney-General of New South Wales	25/06/2015
Anderson on behalf of the Wulli Wulli People v State of Queensland (No 3)	13/08/2015
Smirke on behalf of the Jurruru People v State of Western Australia	01/09/2015
Chubby on behalf of the Puutu Kunti Kurrama People and the Pinikura People #1 and #2	02/09/2015
Gorringe on behalf of the Mithaka People v State of Queensland	27/10/2015
Nyikina Mangala People (Nyikina Mangala #2) v State of Western Australia	29/10/2015
Charlie v Northern Territory of Australia	24/11/2015
Durrayjaba v Northern Territory of Australia	24/11/2015
McDinny v Northern Territory of Australia	24/11/2015
Peter v Northern Territory of Australia	24/11/2015
Rory v Northern Territory of Australia	24/11/2015
Green v Northern Territory of Australia	26/11/2015
Jack v Northern Territory of Australia	26/11/2015
Jurluba v Northern Territory of Australia	26/11/2015
Miller v Northern Territory	26/11/2015
Ngajapa v Northern Territory of Australia	26/11/2015
Brown v Northern Territory of Australia	27/11/2015
Largut v Northern Territory of Australia	27/11/2015
Smith on behalf of the Balanggarra People (Balanggarra #4) v State of Western Australia	27/11/2015
Wise on behalf of the Kurungal Native Title Claim v State of Western Australia	01/12/2015
Coulthard v State of South Australia	08/12/2015



Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC	01/02/2017
Sullivan on behalf of the Yulluna People #4 v State of Queensland	20/02/2017
Hill on behalf of the Yirendali People v State of Queensland	20/03/2017
Alhankerr, Atwel/Alkwepetye, Ilkewarn, Kwaty, Mpweringke, Ntyerlkem/Urapentye and Tywerl Landholding Groups v Northern Territory of Australia	05/04/2017
The Kwaty and Tywerl Landholding Groups v Northern Territory of Australia	05/04/2017
Bloomfield on behalf of the members of the Akerte, Atwele, Irrerlerre, Ulpmerre and Warrtharre Landholding Groups v Northern Territory of Australia	06/04/2017
Wikilyiri on behalf of the persons who are ngurraritja for Ananta (Umbeara), Kalka (Kulgera), Watju (Mount Cavenagh), Wapirrka (Victory Downs) and Warnukula (Mulga Park) v Northern Territory of Australia	04/05/2017
Doctor on behalf of the Bigambul People v State of Queensland	23/06/2017
Graham on behalf of the Ngadju People (Ngadju Part B) v State of Western Australia	17/07/2017
Anderson on behalf of the Wulli Wulli People v State of Queensland (No 4)	18/07/2017
Jones on behalf of the Yinhawangka People v State of Western Australia	18/07/2017
Northern Cape York #3 Native Title Claim Group v State of Queensland	26/07/2017
Woosup on behalf of the Ankamuthi People #1 v State of Queensland	26/07/2017
Woosup on behalf of the Ankamuthi People #2 v State of Queensland	26/07/2017
Freddie v Northern Territory	03/08/2017
Barkandji Traditional Owners #8 (Part B) v Attorney-General of New South Wales	22/08/2017
Western Bundjalung People v Attorney General of New South Wales	29/08/2017
Yaegl People #2 v Attorney General of New South Wales	31/08/2017
Gepp-Kennedy on behalf of the Dieri People v State of South Australia	28/09/2017
Lyndon on behalf of the Budina People v State of Western Australia	16/10/2017
I.S. (Deceased) on behalf of the Wajarri Yamatji People (Part A) v State of Western Australia	19/10/2017
K.D. (deceased) on behalf of the Mirning People v State of Western Australia (No 4)	24/10/2017
Taylor v State of Western Australia (No 2)	27/10/2017
The Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda People	28/11/2017
Atkins on behalf of the Gingirana People v State of Western Australia	07/12/2017
Kelly on behalf of the Gumbaynggirr People v Attorney General of New South Wales	08/12/2017



Q&A

