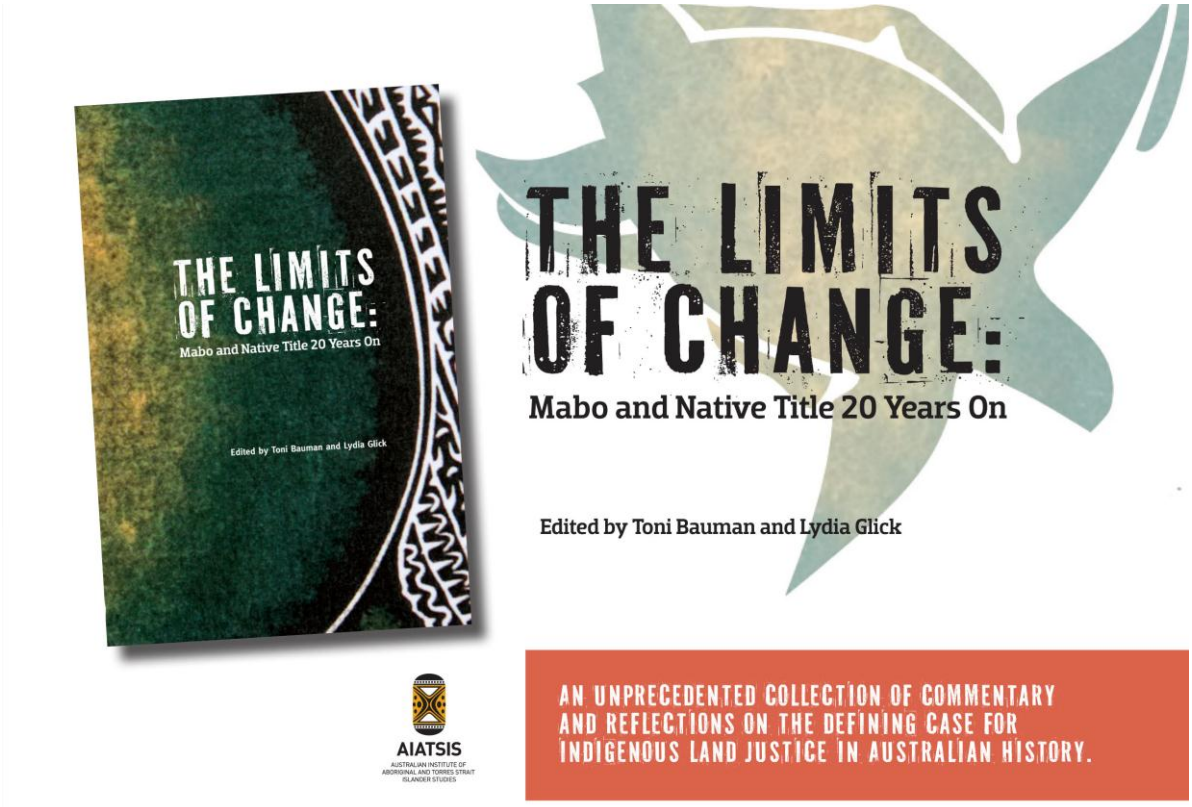
What's New – May 2012



1. AIATSIS Publication

The Limits of Change: Mabo and Native Title 20 Years On

On 3 June 1992, the High Court of Australia handed down the Mabo decision, recognising the continuing rights of Aboriginal and Torres Strait Islander peoples as the original inhabitants of the land under their own law and customs. In 2012, on the 20th anniversary of Mabo, the contributors to this book present a story of a mixed aftermath. *The Limits of Change: Mabo and Native Title 20 Years On* includes perspectives from native title claimants and holders, community, political and corporate leaders, lawyers and judges, academics, consultants and government bureaucrats. The authors dispel myths that continue to surround Mabo, drawing into question assumptions about the impact of the High Court's ruling and unresolved questions of justice for Indigenous Australians.

For those who wish to purchase a copy please send an email to **NTRU@aiatsis.gov.au** The book will be sold at a special discount price of $24.95 to all orders placed before 30 June 2012.

2. Case Summaries

***Lander v State of South Australia* [2012] FCA 427**
1 March 2012
Consent Determination
Federal Court of Australia – Marree Station
Mansfield J
This consent determination concerns the native title claim of the Dieri people over some 47,000 square kilometres of lands and waters in the north-eastern region of South Australia. The Dieri people, the State of South Australia ('the State'), and a range of pastoral, mining and other interested parties were involved in the proceedings. By consent, the Court made a determination in favour of the applicants for non-exclusive native title rights and interests.

The principal evidence in this matter consisted of material co-authored by two anthropologists, based on a comprehensive assessment of the determination area, as well as significant fieldwork carried out with contemporary Aboriginal people. The Dieri peoples' evidence included preservation evidence by claimants and a pastoralist, and various statements, videos and maps from members of the Dieri people that describe geographic boundaries, traditional laws and customs. This material was then assessed by the State and its independent expert.

A Court ordered conference of anthropologists was held and substantial agreement was reached on nearly all the anthropological evidence. After reviewing the materials submitted, the independent expert provided a written opinion stating that a decision by the State to consent to the determination would be justifiable.

The Court considered the evidence in relation to the connection requirements in s223 of the *Native Title Act 1993* (Cth) ('NTA'). The Court emphasised that in consent determinations the focus is on contemporary expressions of traditional laws and customs, and therefore the Court will pay less regard to laws and customs that may have ceased. The Court indicated that consent determinations 'can be made without the necessity of strict proof and direct evidence of each issue as long as inferences can be legitimately made'.

The Court was satisfied that there had been continuity of the core features of Dieri society and traditional law and custom, transmission of knowledge, and no evidence of a break in continuity. However, the Court was of the view that exclusive native title rights were not consistent with the traditional laws and customs put forward by the Dieri people, particularly in the contemporary setting.

The Court found that non-exclusive native title rights and interests were found to exist over most of the determination area, but not with respect to: areas covered by public works; minerals, petroleum or other geothermal energy resources; and a number of land parcels, including pastoral land, Crown land and other land held under Certificate of Title. In addition, pursuant to the non-extinguishment principle established by the NTA, parts of the determination area remain vested in the Crown under the *National Parks and Wildlife Act 1972* (SA).

In line with *De Rose v State of South Australia (No 3)* the Court recognised the extinguishment of native title over those parts of pastoral leases where houses and other exclusive possession-style improvements authorised by pastoral leases had been constructed. The Court did not preclude the possibility of future extinguishment by reason of pastoral improvements, until the law in relation to future improvements is settled.

The non-exclusive native title rights and interests in relation to the determination area include the following rights: to access and move about the determination area; to hunt and fish on the lands and waters; to gather and use natural resources, including water resources; to live, camp and erect shelters; to cook and light fires for domestic purposes; to engage and participate in cultural activities and ceremonies; and to visit, maintain and protect sites of cultural significance to native title holders.

The Court was satisfied that it was appropriate to make orders under s87 of the NTA considering: the period specified in the notice under the s66 of the NTA had expired; there was an agreement between all parties; and the State was sufficiently satisfied as to the proposed evidence of the Dieri people and had considered the interests of the broader community.

***Malay v State of Western Australia* [2012] FCA 369**
11 April 2012
Dismissal of applications
Federal Court of Australia – Perth
Gilmour J
In this matter, the Court ordered that two applications for the determination of native title over areas in the Kimberley region in Western Australia filed on behalf of the Jurnall Gidja native title claimants ('the applicants') be dismissed under s190F(6) of the *Native Title Act 1993* (Cth) ('NTA').

Section 190F(6) of the NTA confers upon the Court a discretionary power to dismiss an application on the application of a party or on its own motion. The Court referred to the explanatory memorandum stating that the dismissal power is

'intended to provide a greater focus on the responsibility of the applicants to take steps to improve the quality of their claims, recognising that poor quality claims are a burden on the native title system.'

At the directions hearing on 15 March 2011, there was no appearance for the applicant in relation to either application. During this directions hearing, the Court made orders that the applicants file and serve submissions to show cause why the application should not be dismissed pursuant to s190F(6) of the NTA, and adjourned the proceedings. The legal representative for the applicants filed submissions for both applications referring to difficulties in obtaining instructions.

At the directions hearing on 5 September 2011, the legal representative for the applicants sought orders for both applications to be referred to mediation. No other party supported this course and the Court again invited the parties to make submissions in relation to dismissing the matter per s190F(6) of the NTA.

The applicants failed to make submissions in accordance with the Court order, and on 12 March 2012 at a further directions hearing, the legal representative for the applicants filed a notice of solicitor ceasing to act. On the same day, via email, Desert Management Pty Ltd, purporting to act as the applicants' agent, requested 4 months to obtain solicitors for the applicants. The Court did not accept that the applicants had appointed Desert Management Pty Ltd to act as their agent, pursuant to s84B of the NTA, noting that no evidence had been provided to that effect and that the purported agents failed to appear at that directions hearing.

The Court was satisfied that: the conditions in s190B of the NTA were not satisfied; the applicants had not taken any steps to amend the applications over a considerable period of time; the avenues for reconsideration and review of the decision of the Native Title Registrar had been exhausted; and there was no other reason why each application for determination of native title should not be dismissed. Accordingly, the Court dismissed both applications per s190F(6) of the NTA.

***Wyman on behalf of the Bidjara People v State of Queensland* [2012] FCA 397**
19 April 2012
Application for interlocutory injunction
Federal Court of Australia – Alice Springs
(Heard in Brisbane)
Reeves J
In this matter, the Court dismissed an application on behalf of the Bidjara people ('the applicants') for an interlocutory injunction to restrain the Brown River people ('the respondents') from obtaining an anthropological report.

An application was made to Queensland South Native Title Service ('QSNTS') for funding to assist the applicants to pursue their native title determination. Dr Sackett was instructed by QSNTS to prepare a connection report for the applicants for the purpose of determining a funding application. As a result of Dr Sackett's report ('Sackett report') funding to the applicants was terminated. QSNTS then consented to a number of orders, which included an undertaking not to use any material it held on behalf of the Bidjara people. The orders did not specifically mention the Sackett report.

QSNTS sought to engage Dr Sackett to prepare a fresh report for the respondents. The applicants applied for an injunction against the Brown River people restricting them from disclosing any confidential information or any information obtained in breach of legal professional privilege obtained by them from QSNTS and/or Dr Sackett.

The Court concluded that an injunction expressed in such broad terms was not necessary or appropriate in the absence of a dispute about the legal professional privilege attaching to that information, and in the absence of any evidence of a past or threatened breach. Accordingly, the Court dismissed the application.

***Gibson & Ors v The Minister for Finance, Natural Resources and the Arts & Anor* [2012] QSC 132**
17 May 2012
Application for a statutory order of review
Supreme Court of Queensland - Cairns
Henry J
In this matter, the Court dismissed the joint application of Hope Vale Aboriginal Shire Council, Gibson and others ('the applicants') for an order of judicial review against a decision of the Minister for Finance, Natural Resources and the Arts ('the Minister') to appoint Hope Vale Congress Aboriginal Corporation RNTBC ('Congress') as a grantee of the Hope Vale Deed of Grant in Trust ('the Deed') under s40 of the *Aboriginal Land Act 1991* (Qld) ('ALA').

In 1986, the Hope Vale Aboriginal Shire Council ('the Council') was granted around 110 hectares of land via a deed of grant of land in trust to be held 'in trust for the benefit of Aboriginal inhabitants' under the *Land Act 1962* (Qld). The land covered by the Deed is now considered 'transferable land' under the ALA. In 1997, the Federal Court made a native title determination in relation to largely the same land pursuant to the *Native Title Act 1993* (Cth) ('the NTA'), and in 2002 Congress was appointed as a Registered Native Title Bodies Corporate ('RNTBC') in relation to that determination.

On 8 December 2011, the Minister made a decision to transfer the land covered by the Deed from the Council in fee simple to Congress to 'hold the land in trust for the benefit of Aboriginal people particularly concerned with them, their

ancestors and their descendants' ('the decision') per s40 of the ALA. This meant that Congress became both the RNTBC and the grantee of the Deed over largely the same lands. This is the decision that the applicants sought to have judicially reviewed.

The applicants claimed that Congress' obligations as grantee of the Deed were incompatible with its obligations as an RNTBC. The applicants argued that this incompatibility caused an insoluble conflict as Congress would be required to act for the benefit of the 'Aboriginal people particularly concerned with the land' in accordance with the Deed and at the same time act as an agent for the common law native title holders as an RNTBC. The applicants contended that where such conflict exists, the RNTBC's obligations prevail and the Deed obligations imposed per s40 of the ALA are invalid to the extent of any inconsistency per s109 of the Constitution.

The applicant argued that Congress' discretion as the grantee of the Deed was unduly fettered with respect to any Indigenous land use agreements ('ILUA') given that Congress must obtain consent from the common law holders with respect to any activity likely to damage or interfere with Aboriginal Cultural Heritage before acting. The applicants further emphasised the incompatibility claiming that any money that Congress received in both capacities would be required to be held for the native title holders in accordance with Regulation 7(1)(c) and (d) of the *Native Title (Prescribed Bodies Corporate) Regulation 1999* (Cth) ('the Regulations').

In addition, the applicants claimed that the RNTBC's obligation in regulation 8 of the Regulations requiring the consultation and consent of the native title common law holders before any decision is made affecting their native title rights and interests, is in conflict with the Congress' obligation as the grantee of the Deed to 'hold the land in trust for the benefit of Aboriginal people particularly concerned with them, their ancestors and their descendants'. The applicants argue that an act affects native title if it 'extinguishes the native title rights and interests or if it is otherwise partly or wholly inconsistent with their continued existence, enjoyment or exercise', and therefore the obligations of both cannot operate together harmoniously.

If successful on any of the above claims, the applicant sought a declaration that the decision is void and has no effect and an order quashing or setting aside the decision.

The Court considered Congress' duties as the grantee of the Deed and as an RNTBC, including the possibility that the functions of both could be incompatible. The Court noted that in both capacities, Congress is bound by a fiduciary duty. The Court considered that under the Deed, Congress has an obligation to apply the royalties from mining 'for the benefit of Aboriginal people for whose benefit the trustee (Congress) holds the land, particularly those affected by the activities to which the royalty amount relates'. The Court considered that as a RNTBC, Congress has fiduciary obligations to 'common law holders' of native title, which are defined under s56 of the NTA as 'all persons included on the native title determination as the native title holders'.

The Court considered that the applicants' arguments lost weight when read against s57 and s58 of the NTA. The Court found that the correct interpretation of regulation 7 of the Regulations is that money received as compensation or otherwise, by Congress in its capacity as a RNTBC in relation to native title, is for that purpose and does not apply more broadly to money received by Congress under the Deed.

The Court considered the applicants' argument regarding conflicts due to the RNTBC's obligations under regulation 8 of the Regulations and found that there can be no real conflict given that the decision regarding consent is the native title holders' decision. As such, there is no alternative consent process and therefore no possible conflict. In relation to the applicants' claim of conflict due to the ILUA, the Court found that the RNTBC obligations regarding cultural heritage are not materially different from the cultural heritage duty of care under the *Aboriginal Cultural Heritage Act 2003* (Qld).

In rejecting the applicants' application, the Court held that the RNTBC and grantee of the Deed involve two separate and distinct roles. The Court noted that the Deed is concerned solely with the management of Aboriginal land, where the RNTBC is concerned solely with native title rights and interests. Accordingly, the Court dismissed the applicants' application, and adjourned the matter for a further hearing on costs.

***Dietman v Karpany & Anor* [2012] SASCFC 53**
22 May 2012
Native title extinguishment
Supreme Court of South Australia (Full Court)
Gray, Kelly and Blue JJ
In this matter, the full Court allowed the appeal from a decision of a Magistrate dismissing a complaint against Owen John Karpany and Daniel Thomas Karpany, members of the Narrunga people ('the respondents'), brought by Peter Dietman, a public officer of the Department of Primary Industries and Resources of South Australia ('the appellant'), and remitted the matter to the Magistrate for resentencing.

The respondents were charged for possession and control of undersized abalone contrary to s72(2)(c) of the *Fisheries Management Act 2007* (SA) ('State Act'). The respondents asserted that this provision was rendered inoperative by s211 of the *Native Title Act 1993* (Cth) ('NTA'), which removes certain prohibitions on native title holders. The appellant argued

that any relevant customary rights that the Narrunga people enjoyed in the past had been validly extinguished under State Act.

For the purposes of the trial, the respondents accepted that if s72(2)(c) of the State Act was operative, the commission of the offences were proved. The prosecution accepted at trial that both respondents were members of an Aboriginal group whose customary native title rights included fishing in the waters where the abalones were taken. It was also accepted by the prosecution that the abalones were taken for non-commercial purposes. Both parties accepted that if s211 of the NTA applied, it would prevail over the State Act to the extent of any inconsistency, per s109 of the Constitution.

The Magistrate found that the Minister's exceptional power to grant an exemption from specified provisions of the State Act extended to not taking undersized abalone. The Magistrate held that this exemption under s115 of the State Act is in fact an 'instrument' in the context of s211 of the NTA. The prerequisites of s211(1) of the NTA were therefore satisfied and s211(2) applied so as to give both respondents a 'native title' defence to the charge.

The appellant advanced two grounds on appeal:

1. The Magistrate erred in finding that an exemption under s115 of the State Act was a 'license, permit or other instrument'.
2. Section 211(2)(b) of the NTA requires that the taking occur in the exercise or enjoyment of native title rights and interests, and the native title right to take undersized abalone had been validly extinguished by the State Act.

1. <u>License, permit or other instrument</u>

Justice Blue noted that the concept of a license, permit or other instrument is something that is granted to a specific person upon satisfying criteria determined by the relevant legislation: *State of Western Australia v The Commonwealth*; *State of Western Australia v Ward*.

Justice Blue said that the mere existence of an exemption will not convert a prohibited activity, specifically taking protected species or undersized fish, into a regulated activity, and distinguished the facts at hand from those of *Wilkes v Johnsen*, on the basis that a license, a permit and an exemption served similar purposes under the *Fish Resources Management Act 1994* (WA). Under the *Fish Resources Management Act 1994* (WA) an application for an exemption is made in an approved form accompanied by a prescribed fee and is granted subject to certain conditions which attract a penalty if contravened.

Justice Blue concluded that the Magistrate was in error in concluding that an exemption under s115 of the State Act can be described as an instrument within the meaning of s211 of the NTA. Justice Gray and Justice Kelly agreed with the reasoning of Justice Blue on the first ground regarding the interpretation of 'license, permit or other instrument'.

2. <u>Extinguishment of native title rights</u>

Justice Gray referred to the common law rule that inconsistency of native title with a State law leads to its extinguishment to the extent of the inconsistency. Reference was also made to common law rules which state that native title cannot revive once extinguished absent a statutory provision making it revive.

Until 1971, the legislative regime regulating fishing in South Australia expressly did not apply to the Aboriginal customary right to fish for personal purposes. Section 29(2) of the *Fisheries Act 1971* (SA) ('1971 Act') repealed and replaced earlier legislation with a new right to take fish other than for the purposes of sale and subject to other sections of the Act. Section 47(2) of the 1971 Act expressly prohibited the taking of undersized fish, including abalone. There was no exclusion of the applicability of the 1971 Act to Aboriginal persons. This scheme was continued by the *Fisheries Act 1982* (SA).

The respondents argued that the 1971 Act only operated to regulate the manner in which native title rights and interests may be exercised. His Honour said that, unlike *Yanner v Eaton*, the effect of the 1971 Act was to place all persons, including Aboriginal persons, under the regime of the statute. Justice Gray reached the conclusion that the 1971 Act therefore extinguished the relevant native title rights. Justice Kelly agreed with the decision of Justice Gray on the second ground.

Justice Blue dissented on the second ground regarding the extinguishment of native title rights. Firstly, his Honour said that *Yanner v Eaton* applied directly to this factual scenario. His Honour considered the fact that the 1971 Act regulated the right to fish by creating a licensing regime was not inconsistent with the continued existence of a native title right to fish and did not extinguish that right. Secondly, his Honour concluded that merely removing the previous exclusion of Aboriginal persons from the 1971 Act did not demonstrate a clear and plain intention to extinguish any native title right to fish.

The Full Court allowed the appeal, in favour of the appellant, and remitted the matter to the Magistrate for resentencing.

***Dodd v State of South Australia* [2012] FCA 519**
22 May 2012
Consent Determination
Federal Court of Australia – Finniss Springs Station
Finn J

This matter involved an application lodged by the Arabana people ('the applicants') in 1998 over land in the central/far north of South Australia spanning between Marree in the southeast and Oodnadatta in the northwest. The applicants, the State of South Australia ('the State'), and a range of pastoral, mining and other interested parties were party to the proceedings. By consent, the Court made a determination in favour of the applicants for non-exclusive native title rights and interests over approximately 68,823 square kilometres.

In this matter, the State and the applicants agreed to execute an Indigenous land use agreement ('ILUA') at the same time as the consent determination to surrender native title over those parcels within the town of Marree where native title had not been previously extinguished. The majority of the determination area is covered by pastoral lease, including Anna Creek Station, the largest cattle station in the world, and Finniss Springs, a former pastoral station of particular significance to the applicants. Pursuant to the ILUA, the State agreed to grant long-term tenure over Finniss Springs to the applicants. This ILUA also provides for a process under which the State may undertake future acts in the determination area. In addition, the ILUA provides a final settlement of the State's compensation liability pursuant to the *Native Title Act 1993* (Cth) ('NTA').

Anthropologists engaged on behalf of the applicants prepared an expert report that addressed the connection requirements in s223 of the NTA Act. Fieldwork in the southern half of the claim area, which both the applicants and State officers participated in, helped to demonstrate the applicants' contemporary connection to country. This approach had not previously been adopted in South Australia.

The State conducted a thorough review of ethno-historical literature for the claim area, as well as historical and genealogical research. The expert material provided by the applicants, including video footage from the joint fieldwork, was considered by external Counsel on behalf of the State. Counsel then provided a written opinion stating that based on the evidence a consent determination was justifiable.

His Honour stated that more recently the Court has been prepared to rely upon the State's protocol or procedure by which it determines whether native title (as defined in s223) has been established. The evidence suggested that there remains a distinct social group which identifies as 'Arabana' and which observes normative rules about succession to membership of the group. The Court was prepared to accept, on the opinion of experts, that members of the contemporary claim group are the descendants or successors of native title holders for the claim area at sovereignty.

The evidence indicated that there had clearly been some transformation in the characteristics of the Arabana society since sovereignty. The traditional laws and customs concerning mechanisms of succession, the system of kinship and marriage, and the system of land holding had transformed. However, the Court accepted that these changes were founded in and consistent with the classical system, and that the native title rights and interests recognised were consistent with traditional rights and interests.

This consent determination means that the applicants have non-exclusive rights and interests in relation to the determination area to: access and move about the determination area; hunt and fish on the lands and waters; gather and use natural resources, including water resources; share and exchange the subsistence and other traditional resources; live, camp and erect shelters; cook and light fires for domestic purposes; engage and participate in cultural activities and ceremonies; and visit, maintain and protect sites of cultural significance to native title holders.

However, native title rights and interests have been extinguished with respect to: houses, fixtures and other improvements constructed on pastoral leases prior to the date of determination; areas covered by public works; minerals, petroleum or other geothermal energy resources; a number of allotments in the locality of the Marree township, adjacent and suburban Marree, and William Creek. Pursuant to the non-extinguishment principle established by s238 of the NTA, native title is suppressed over the parts of Lake Eyre National Park and Lake Torrens National Park that fall within the determination area.

Section 87 of the NTA empowers the Court to make a consent determination of native determination if certain procedural conditions have been satisfied. The Court was satisfied that the period of notice under s66 had elapsed, it was an order within its power, and the requirements of s225 had been met. Accordingly, the Court made the determination as agreed by the parties and ordered that the Arabana Aboriginal Corporation is the prescribed body corporate for the purposes of s57(2) of the NTA.

3. Indigenous Land Use Agreements ('ILUA')

The Native Title Research Unit within AIATSIS maintains an ILUA summary which provides hyperlinks to information on the National Native Title Tribunal ('NNTT') and the Agreements, Treaties, and Negotiated Settlements ('ATNS') websites.

In May 2012, **37** ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
10/5/2012	Port of Abbot Point and Abbot Point State Development Area	QI2011/063	AA	QLD	Access Co-management Extinguishment Infrastructure
16/52012	Mamu People and Ergon Energy	QI2011/067	AA	QLD	Access Energy
17/5/2012	The River Murray and Crown Lands	SI2011/025	AA	SA	Access Co-management Consultation protocol
17/5/2012	Kalkadoon People/May Downs (aka Meltham)	QI2012/007	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Barr Creek and Toorah Vale	QI2012/006	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Ashover	QI2012/008	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Corella Park, Ginburra (aka Lanark), Mount Maggie and Timberu	QI2012/010	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Brightlands and Bulonga	QI2012/009	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Bushy Park	QI2012/018	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Bortala (aka Alsace)	QI2012/017	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Thorntonia	QI2012/001	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Carsland, Patricia Vale, Quamby, Evandean, Yambini and Venus (aka Jessivale)	QI2012/019	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/The Nobbies (aka Dugald)	QI2012/022	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Heywood and Murrumba	QI2012/021	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Granada	QI2012/020	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Ardmore	QI2012/013	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Boomara and Coolullah	QI2012/012	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Mellish Park	QI2012/030	AA	QLD	Terms of Access
17/5/2012	Kalkadoon People/Bannockburn (aka Koolamarra)	QI2012/016	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Ballaghmore Downs and Tyndool	QI2012/015	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Farley and Girla (aka Girila)	QI2012/014	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon Pre-Determination	QI2012/026	AA	QLD	Extinguishment Tenure resolution
17/5/2012	Kalkadoon People/ Gleeson	QI2012/035	AA	QLD	Access Terms of Access

17/5/2012	Kalkadooon People/Buckingham Downs	QI2012/004	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Bendigo Park (aka Yadthor)	QI2012/033	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/White Hills	QI2012/036	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Chumvale, Jersey Plains and Bloodwood (aka Tommy Creek)	QI2012/005	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Devoncourt and Stradbroke (aka Stanbroke)	QI2012/011	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Starcross	QI2011/066	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Ibis Creek	QI2012/028	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Hillside	QI2012/027	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Angus (aka Rosebud) and Coll (aka Rifle Creek)	QI2012/002	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Roxmere	QI2012/003	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Berguna and Nardoo	QI2012/032	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Lorraine Talawanta	QI2012/029	AA	QLD	Access Terms of Access
17/5/2012	Kalkadoon People/Clonagh and Corella	QI2012/031	AA	QLD	Access Terms of Access
30/5/2012	HPX3	QI2012/023	AA	QLD	Access Mining

For more information about ILUAs, see the NNTT Website and the ATNS Database.

4. Native Title Determinations

The Native Title Research Unit within AIATSIS maintains a determinations summary which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.

In May 2012, **3** native title determinations were handed down.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type
Dieri	*Lander v State of South Australia* [2012] FCA 427	01/05/2012	SA	Native Title Exists in Parts of the Determination Area	CONSENT DETERMINATION	CLAIMANT
Arabana People	*Dodd v State of South Australia* [2012] FCA 519	22/05/2012	SA	Native Title Exists in Parts of the Determination Area	CONSENT DETERMINATION	CLAIMANT
Nyangumarta-Karajarri Overlap Proceeding (Yawinya)	*Hunter & Ors v State of Western Australia* (unreported, FCA, 25 May 2012, North J)	25/05/2012	WA	Native Title Exists in Parts of the Determination Area	CONSENT DETERMINATION	CLAIMANT

For more information about native title consent determinations and some litigated determinations see the NNTT and ATNS websites.

5. Legislation

Western Australia
Aboriginal Heritage Act 1972 (WA)

The State government of Western Australia intends to make amendments to the *Aboriginal Heritage Act 1972*, which is the State's principal legislation enabling the protection of Aboriginal cultural heritage. These amendments are intended to improve the protection, certainty and compliance in relation to Aboriginal cultural heritage. There was a five-week public comment to provide feedback on the discussion paper or to make a comment in relation to these proposed amendments.

- Download the discussion paper, 'Seven proposals to regulate and amend the *Aboriginal Heritage Act 1972* for improved clarity, compliance, effectiveness, efficiency and certainty' by clicking here.
- To view the media statement issued by the Minister for Indigenous Affairs, click here.

6. Registered Native Title Bodies Corporate ('RNTBC')

The Native Title Research Unit within AIATSIS maintains a RNTBC summary document which provides details about RNTBCs in each State/Territory including the RNTBC name, RNTBC type (agent or trustee) and relevant native title determination information.

Additional information about the RNTBC can be accessed through hyperlinks to corporation information on the Office of the Registrar of Indigenous Corporations (ORIC) website; case law on the Austlii website; and native title determination information on the NNTT and ATNS websites.

7. Public Notices

The *Native Title Act 1993* (Cth) requires that native title parties and the public must be notified of:

- proposed grants of mining leases and claims;
- proposed grants of exploration tenements;
- proposed addition of excluded land in exploration permits;
- proposed grant of authority to prospect; and
- proposed mineral development licences.

The public notice must occur in both:

- a newspaper that circulates generally throughout the area to which the notification relates; and
- a relevant special interest publication that is published at least once a month, which:
    - caters mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders; and
    - is circulated in the geographical area of the proposed activities.

To access the most recent public notices visit the NNTT website or the Koori Mail website.

8. Native Title in the News

The Native Title Research Unit within AIATSIS publishes Native Title in the News which contains summaries of newspaper articles and media releases relevant to native title.

9. Native Title Publications

Books:
T Bauman & L Glick (eds.), *The Limits of Change: Mabo and Native Title 20 Years On*, AIATSIS Research Publications, Canberra, 2012.

> Abstract: The voices represented in this diverse collection include some of the leading practitioners behind the decisions and consequences of the most important case in the struggle for land justice for Australia's first peoples. Their unique perspectives do not always reach the same conclusions and are expressed in a range of styles, from formal research papers to memoir-style reflections and interviews. Informed and illuminating, this book will be essential reading for anybody who seeks to understand the issues, debates and current thinking surrounding native title in Australia.

Media Releases:

Attorney-General's Department
Improving our courts and tribunals - 8 May 2012

- The Attorney-General, the Hon Nicola Roxon, stated that the effectiveness and efficiency of the native title system will be improved with native title claims mediation moving from the National Native Title Tribunal to the Federal Court of Australia. The Attorney-General said that 'by drawing on the Federal Court's case management powers and expertise, this reform will contribute to a more effective native title system that delivers quality outcomes in a timely manner.' See the Attorney-General's website for more details.

ANTaR
Indigenous budget 2012-2013 - 9 May 2012

- With the 20th anniversary of the *Mabo* decision, ANTaR is disappointed that the Government has not delivered much needed funding to native title bodies. ANTaR has stated that Native Title Representative Bodies and Prescribed Bodies Corporate are central to the recognition, management and administration of native title claims yet are chronically underfunded: 'The best way to improve native title outcomes is to level the playing field. Adequate funding for native title bodies would support this objective and should be considered a high priority for the Government.' See the ANTaR website for more details.

National Native Title Tribunal ('NNTT')
Native title institutional reforms will ensure NNTT's continuing role in the native title system - 17 May 2012

- On 8 May 2012, the Commonwealth Government announced its decision to effect native title institutional reform as part of the 2012-13 Budget. The reforms involve both the NNTT and the Federal Court. From 1 July 2012, the Federal Court will be responsible for the mediation of native title claims and claims-related Indigenous land use agreements. All of the NNTT's other statutory functions will remain with the NNTT. See the NNTT website for more details.

Great Barrier Reef Marine Park Authority
Workshop helps Traditional Owners protect sea country - 18 May 2012

- This workshop, held on 25 May 2012, was intended to give traditional owners a clear understanding of how their native title rights apply to the Marine Park. The workshop followed requests from Aboriginal and Torres Strait Islander peoples for more information on how zoning and native title applies in the Marine Park. See the GBRMPA website for more details.

National Native Title Tribunal ('NNTT')
Arabana native title claim resolved in South Australia - 22 May 2012

- Native title rights for the Arabana people in South Australia have today been recognised with a Federal Court hearing, which was delivered on country at Finniss Springs Station, located south of the Oodnadatta Track, around 50km west of Maree. Justice Finn made a consent determination over the claim for the Arabana people, to recognise their non-exclusive native title rights and interests over an area located central north of South Australia, covering approximately 68,823 square kilometres. The Arabana claim has been the subject of extensive mediation by the NNTT, which facilitated the claim settlement negotiations since June 2010. See the NNTT website for more details.

Government of South Australia ('SA')
Historic day for the Arabana people - 22 May 2012

- Orders made by the Federal Court on 22 May 2012 represent an historic acknowledgement of the Arabana people's traditional rights over their lands and waters. The Attorney General of SA, John Rau, said, 'It officially recognises that the Arabana people have been in this area for a very long time, and that they hold important rights in the land, based on knowledge and customs that have been handed down through generations. It brings what has been an arduous 14 year court process to a successful close.' See the SA Government website for more details.

National Native Title Tribunal ('NNTT')
Nyangumarta Karajarri native title claim resolved over south western Kimberley - 25 May 2012

- Justice North made a consent determination over the claim for the Nyangumarta and Karajarri people, to recognise their non-exclusive native title rights and interests over an area located in the south western Kimberley region covering approximately 2000 square kilometres. The NNTT assisted in mediating between all parties since 2010 and an agreement was reached in May 2012. Tribunal Member Dan O'Dea said that both the Nyangumarta and Karajarri peoples have been negotiating and engaging in a co-operative manner which has resulted in this consent determination. See the NNTT website for more details.

National Native Title Tribunal ('NNTT')
Tribunal acknowledges milestone in native title - 20 years since Mabo - 28 May 2012

- The 3 June 2012 marked the 20th anniversary of the High Court of Australia's historic decision in *Mabo v Queensland (No 2)*. In the lead up to this milestone, the NNTT, which was established under the *Native Title Act 1993* (Cth), has published a commemorative brochure summarising key developments, determinations and trends in native title. President of the Native Title Tribunal, Graeme Neate, said that agreement-making has become the usual way of resolving native title claims and other native title issues. See the NNTT website for more details.

Yamatji Marlpa Aboriginal Corporation('YMAC') and Kimberley Land Council
Federal Court recognises joint native title rights - 28 May 2012

- The Kimberley Land Council and the YMAC acted on behalf of the Karajarri and Nyangumarta claimants to negotiate native title across 2000 square kilometres of shared country in the East Pilbara and West Kimberley regions of Western Australia. On 25 May 2012, the Federal Court handed down a native title determination in favour of the Karajarri and Nyangumarta communities at an on-country determination at Anna Plains Station. See the YMAC website for more details.

Queensland South Native Title Service ('QSNTS')
QSNTS celebrates 20th anniversary of Mabo decision - 31 May 2012

- On 31 May 2012, a roundtable event with preeminent native title experts was hosted by the University of Queensland and facilitated by ABC Radio National's Paul Barclay. QSNTS chief executive officer Kevin Smith joined the Honourable Michael Kirby AC CMG, Les Malezer, Graeme Neate, Jonathan Fulcher and Margaret Stephenson on the panel to review the native title outcomes achieved over the past twenty years and the limitations of the High Court's *Mabo* decision. It was aired on the ABC's 'Big Ideas' program at **8:05pm, 4 June 2012**. See the ABC website for more details.

Attorney-General's Department
The 20th anniversary of the Mabo Native Title decision - 31 May 2012

- The Attorney-General, the Hon Nicola Roxon, reflects on an important anniversary - the 20th anniversary of the *Mabo* decision in the High Court: 'The decision has been widely recognised as a triumph for the common law, although criticised by others. And whilst there has been much commentary on the nature of the Court's decision, the decision unquestionably provided a valuable point upon which to further develop recognition and respect for Indigenous Australians.' See the Attorney-General's website for more details.

Podcasts and Radio broadcasts:

ABC Radio National
Mabo 20 years on - 7 May 2012
Twenty years have passed since the High Court handed down the *Mabo* judgment regarding Indigenous land rights. At the time, the Keating Labor government's efforts to pass the subsequent *Native Title Act* (Cth) faced strident criticism from miners, from the coalition opposition, and from within Labor government ranks.
To listen to this interview with Liz Jackson, visit the ABC website.

ABC Rural
Six hundred Indigenous Land Use Agreements registered - 22 May 2012
President of the Native Title Tribunal, Graeme Neate, said the introduction of Indigenous land use agreements ('ILUAs') has reached a milestone with the registration of the 600th agreement.
To listen to this interview with Graeme Neate, visit the ABC website.

ABC Rural
Mabo ruling continues to deliver results for Indigenous Australians - 28 May 2012
On 25 May 2012, around 150 people gathered at the Anna Plains Station in the Kimberley region of Western Australia to celebrate the Federal Court's recognition of a joint native title determination over approximately 2,000 square kilometres to the south-west of Broome. Justice North acknowledged the 20th anniversary of *Mabo*, which paved the way for these types of determinations.
To listen to reports from Anna Plains Station and Justice North's address to the Nyangumarta and Karajarri peoples, visit the ABC website.

Video Bulletins and Slideshows

Debate: Are anthropologists being candid about Aboriginal cultural discontinuities in native title cases?
School of Social Science, University of Queensland ('UQ'), 4 May 2012
Proponent: Dr Ron Brunton, Consultant Anthropologist
Respondent: Dr Lee Sackett, Consultant Anthropologist & Honorary Research Fellow, UQ School of Social Science
Chair: Professor David Trigger, Head School of Social Science, UQ
Watch the Video

Native title granted over Lake Eyre
Sky News, 22 May 2012
The Federal Court has granted the Arabana people native title to more than 68,000 square kilometres in South Australia.
Watch the video

Newsletters:
Native Title Services Victoria, *Newsletter*, Issue 23, May 2012

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10. Training and Professional Development Opportunities

The Aurora Project
See the Aurora Project: 2012 Program Calendar for information on training and personal development for staff of native title representative bodies, native title service providers, and RNTBCs.

Indigenous Research Protocols Workshop
Convenor: The School of Indigenous Australian Studies ('SIAS')
Date: 17 August 2012
Time: 8:45am–1:00pm
Location: Building 33, Room 003, SIAS, James Cook University, Townsville
Registration: Registration available on James Cook University website
Cost: $50

The School of Indigenous Australian Studies (SIAS) is offering an Indigenous Research Protocols Workshop which is designed for researchers and/or those wishing to engage effectively Aboriginal and/or Torres Strait Islander Peoples. The aim of the program is to provide participants with the knowledge to be able to apply relevant research protocols and/or ensure that relevant research protocols are applied to promote positive research outcomes for Aboriginal and Torres Strait Islander peoples, researchers and James Cook University.
For more information see the James Cook University website.

11. Events

National Aborigines and Islanders Day Observance Committee ('NAIDOC') Week
Spirit of the Tent Embassy: 40 years on

The origins of NAIDOC can be traced to the emergence of Aboriginal groups in the 1920s which sought to increase awareness in the wider community of the status and treatment of Indigenous Australians. NAIDOC is a celebration of Aboriginal and Torres Strait Islander cultures and an opportunity to recognise the contributions of Indigenous Australians in various fields. This year's theme was selected by the National NAIDOC Committee to celebrate the 40th anniversary of the Aboriginal Tent Embassy and acknowledge the key contributors to its long history.

Activities take place across the nation during NAIDOC Week in the first full week of July. All Australians are encouraged to participate. See the Events Calendar on the NAIDOC site.