



25 YEARS OF NATIVE TITLE RECOGNITION

Contents

Mabo Day: 3 June 2017	1
Ms Raelene Webb QC, President NNTT	2
Mr Greg McIntyre SC, Solicitor to Mabo plaintiffs	3
Videos: Mabo Day celebrations, Mer Island	4
Photo Gallery	5
25 Years of Native Title Anthropology: 10 February 2017	6
Order of events	7
Speaker Biographies	8
Photo Gallery	11



*Invited guests at Mabo Day celebrations paying respect
at Eddie Mabo's gravesite*

CELEBRATE 2017

MABO DAY: 3 JUNE 2017

25th anniversary celebrations of the *Mabo v Queensland [No 2]* were held on Mer Island in the Torres Straits on 3 June 2017.

Personal reflections are made by some of the distinguished guests at this event, including NNTT President, Ms Raelene Webb QC and Greg McIntyre SC.

25 YEARS OF NATIVE TITLE ANTHROPOLOGY: 10 FEBRUARY 2017

On 10 February 2017, eminent anthropologists and members of the legal profession congregated in Perth to celebrate 25 Years of Native Title Anthropology.

Speakers from both disciplines outlined the engagement between native title law and anthropology and the outcomes seen from this collaboration. Many speakers provided anecdotes of evidence collection and on-country court hearings which provided many challenges and successes

To read all parts of the seminar, you can access the transcript [here](#).

MABO DAY: 3 JUNE 2017

Ms Raelene Webb QC, NNTT President

On 2–3 June 2017 I had the great privilege of attending the celebrations for the 25th anniversary of the Mabo decision on Mer Island in the Torres Strait—the home of native title.

The Mabo decision marked a paradigm legal shift in Australian law. It was a fundamental change in approach and underlying assumptions which had underpinned Australian property law for over 200 years. The decision very belatedly acknowledged the history of Indigenous dispossession in Australia. It proceeded on a principle that Indigenous people should be treated equally before the law with respect to their property rights, and that the common law would recognise and protect those rights. It overturned assumptions of Crown ownership of land from the assertion of British sovereignty.

The two days I spent on Mer (Murray Island) were truly celebratory. Friday 2 June commenced with a symposium, followed by a full day (and night) of celebration on Saturday 3 June, commencing with visits to the gravesites of four of the five plaintiffs: Eddie (Koiki) Mabo, James Rice, Celuia Mapo Salee and Sam Passi, as well as a leading witness, Elder Henry Kabere. Sadly, the remaining plaintiff, Dave Passi has since passed away on 17 June 2017.

We heard about the courage of all the plaintiffs and how important other plaintiffs were in winning the case now celebrated as ‘Mabo’. Andrew Passi gave a particularly moving speech honouring the contribution of his father Sam Passi and his brother Dave Passi.

Of particular interest to me was the story of Celuia Mapo Salee—the **mother** of the Mabo case. Yes, that is correct. Despite the repetitive reporting of the case being commenced by ‘five Meriam men’, the most influential in getting the case off the ground was a woman, who sadly passed away before the decision was handed down, as did Eddie Mabo and Sam Passi.

The story told on Mer was that when Eddie Mabo was thinking of starting the legal action, Celuia Mapo Salee essentially took charge of the way it should be conducted from the Meriam perspective.

It was a reminder to me to always look beyond what is said by others, not to make unwarranted assumptions, and to always give credit where credit is due.

I salute you Celuia Mapo Salee—the mother of native title.

Raelene Webb QC
President, National Native Title Tribunal



Ms Raelene Webb QC, President National Native Title Tribunal laying a wreath at Celuia Mapo Salee's gravesite, Mer Island.

Mr Greg McIntyre SC, solicitor to Mabo plaintiffs

It was an honour to attend the 25th anniversary celebrations of the *Mabo v Queensland* decision on Mer Island with the Meriam people and a number of other invited guests. The day was a time to celebrate the contribution of the five Plaintiffs, but was tinged with sadness as we paid our respects at the graves of those who had passed.

William Koiki Mabo spoke on behalf of his family at the newly landscaped gravesite of his Grandfather Eddie Koiki Mabo, inspiring us as a potential compassionate new leader.

Wreaths were laid in turn at the graves of Koiki, James Rice, Celuia Mapo Salee, a leading witness Henry Kabere and Sam Passi. Ron Day, Chairman of the Mer Council at the time of the Supreme Court hearing on Mer in 1989, spoke of the courage and vision which the Plaintiffs and witnesses had in fighting the case in the Courts. Andrew Passi spoke at the gravesite of his father, Deacon Sam Passi, of the integral part which Sam and his brother Father Dave Passi played in the success of the case.

The day was laced with many speeches stirring Islanders to seize the opportunities which lay before them, much dancing and a flag raising by the eight tribes of Mer, decked out in a jersey decorated with clan symbols, and feasting on traditional Islander fare. It was topped off by the official launch and presentations of a special [commemorative coin](#) by the Minister for Indigenous Affairs, Senator Nigel Scullion.

I was particularly pleased to don traditional Islander garb to participate in the wreath laying ceremony at the grave of Sam Passi and to learn that the coconut palm frond hat, which I was given at Mer in 1989 (and which I brought back to Mer in 2017, browner but stronger), was made by Sam's daughter Del Passi; and to be introduced to her sons, who demonstrated their dancing prowess, along with Sam's other grandsons, on behalf of the Komet tribe.

Greg McIntyre SC

Videos: Mabo Day celebrations, Mer Island



Watch: [Torres Strait Islands Anthem and Flag Raising Ceremony - Mabo Day](#)



Watch: [Torres Strait Islanders singing at Mabo Day celebrations](#)



Watch: [Male dance before wreath laying in celebration of Sam Passi](#)



Watch: [Women's dance before wreath laying in celebration of Sam Passi](#)

Photo Gallery



Dancing celebrations, Mer Island



Dancing celebrations, Mabo Day



Dancing celebrations, Mer Island



Dancing celebrations, Mabo Day



Dancing celebrations, Mer Island



Eddie Koiki Mabo's gravesite



Dancing celebrations, Mer Island



Wearing commemorative shirts with clan symbols



Eddie Koiki Mabo's newly landscaped gravesite



Invited guests attending Mabo Day celebrations



Greg McIntyre SC lays a wreath at Sam Passi's gravesite



Sam Passi's gravesite



Paying respects at the graves of Mabo plaintiffs



Carving of Malo, the octopus, who created the eight tribes of Mer



Dancers, Mabo Day celebrations



*Mabo 25 years and 1967 referendum
50 years commemorative coin*



*Painting of Malo, the octopus,
who created the eight tribes of Mer*



*Malawup Nona,
Mer Symposium*



*Murrundoo Yanner,
Mer Symposium*



Eddie Koiki Mabo's gravesite



*Professor Marcia Langton,
Mer Symposium*



*Soldier paying respects at
Eddie Mabo's gravesite*



*A soldier paying respects at
Eddie Mabo's gravesite*



*NNTT President Raelene Webb QC
lays a wreath at Celuia Mapo Salee's
gravesite*

25 YEARS OF NATIVE TITLE ANTHROPOLOGY

The event on 10 February 2017 was hosted by the Federal Court of Australia, the National Native Title Tribunal and the Australian National University's Centre for Native Title Anthropology at the Duxton Hotel in Perth to recognise the contribution of anthropology and anthropologists to native title law.

It was attended by nearly 160 people and featured a program of 16 speakers, among them Federal Court judges, anthropologists and lawyers. Each speaker provided a unique perspective on the importance of anthropological knowledge to the legal recognition of native title rights, and some of the joys and challenges of working with anthropologists.

Mr Barry McGuire provided a Welcome to Country on behalf of the Whadjuk People. Mr McGuire sang in language, self-accompanied by the tapping boomerangs, which made for a sincere and moving welcome. He also had some insightful comments to make about the link between the study of a culture and those who live the culture.



Mr Barry McGuire performs a Welcome to Country playing the boomerangs

The proceedings were opened by Justice Michael Barker, who is one of the National Coordinating Judges in the Court's Native Title National Practice Area, and

the judge principally responsible for native title case management in Western Australia.

The first half of the seminar focussed on the perspective of the law of native title. The speakers were all highly regarded counsel, including NNTT President Raelene Webb QC and anthropologists. The second half of the seminar shifted focus to the perspective of the anthropologists.



Tribunal President Raelene Webb QC

Six leading anthropologists reflected on their experiences and on the developing role of the anthropologist over the last 25 years.

Closing remarks were provided by retiring judge the Hon Justice Mansfield AM QC, who reflected on the value and success of the relationship between native title law and anthropology.



Hon Justice Mansfield AM QC presents his closing remarks

Feedback received from guests and since the event has been overwhelmingly positive. This was a successful way to begin celebrations of the 25 years of native title recognition in 2017.

Order of events

Chaired by Raelene Webb QC and Dr Pamela McGrath

1:00pm	Welcome to Country, Mr Barry McGuire
1:10pm	Introduction: anthropology meets the Native Title Act • The Hon. Justice Michael Barker
1:30pm	A short history of the role of anthropology in evidencing Indigenous rights in land • Professor Nicolas Peterson
1:45pm	Friend or foe? Lawyers reflect on the anthropologist as expert witness Leading lawyers discuss the contributions of anthropologists to key native title cases, examining their value as researchers and interpreters of Indigenous society and connection to country. They explore how the law has responded to the conceptual complexity—and at times uncertainty—that anthropological evidence invariably brings to the task of pursuing the legal recognition of traditional rights and interests in land, and share some of the joys and challenges of wrangling with this particular kind of expert. • Mr Robert Blowes SC: <i>In the Dry of 1982, I met an anthropologist</i> • Mr Vance Hughston SC: <i>Anthropological evidence: addressing the issues in dispute</i> • President Raelene Webb QC: <i>Learning from the experts</i> • Mr Peter Quinlan SG SC • Mr Joshua Creamer: <i>Walking the tightrope: balancing the demands of law and anthropology.</i>
3:00pm	Afternoon Tea
3:30pm	Participant witnesses, expert observers: anthropologists reflect on the laws of the land, and the culture of the law Senior anthropologists from around the country discuss key concepts, relationships and practices that have been crucial to helping articulate Indigenous rights in land in ways that make them sensible to Australian law. Some speakers will explore elements of the personal, professional and ethical tensions that result from the often irreconcilable roles anthropologists are expected to play as both cultural brokers and expert witnesses. Others will turn the ethnographic gaze back on the court to consider the limits of the law's ability to recognise and accommodate the complex intercultural character of native title business. • Prof David Trigger: <i>What I've learned from the law and what lawyers have learned from me.</i> • Prof Francesca Merlan: <i>Continuity: proofs and problems</i> • Dr Lee Sackett: <i>Anthropology, the Court, and questions of changes or adaptations in traditional laws and customs</i> • Ms Petronella Vaarzon-Morel: <i>Reflections on gendered relations to the land and native title business</i> • Dr Kingsley Palmer: <i>Disciplining anthropology: Indigenous disputes in native title trials</i> • Prof Peter Sutton: <i>From handmaiden to midwife: rebirthing native tradition as settler legality</i>
5:00pm	Absent friends; forebears and colleagues in native title anthropology • Dr Julie Finlayson
5:10pm	Closing remarks: The future role of anthropology in native title law • The Hon John Mansfield AM QC
5:30pm	Reception

Speaker Biographies

The Hon Justice Michael Barker

Justice Michael Barker was appointed to the Federal Court in February 2009. He was previously a judge of the Supreme Court of Western Australia (WA) from August 2002, and President of the WA State Administrative Tribunal from 2005. Justice Barker enjoyed a substantial native title practice at the Bar before his appointment as a judge, including as counsel for the successful claimants in the Miriuwung Gajerrong (Ward) and Ngarluma Yindjibarndi (Daniel) claims. On the Federal Court, Justice Barker has decided a range of native title claims, including *Banjima People v Western Australia (No 2)* [2013] FCA 868; 305 ALR 1, and CG (Deceased) on behalf of the *Badimia People v State of Western Australia* [2015] FCA 204; and has sat on a number of appeals. Justice Barker is one of the National Coordinating Judges in the Court's Native Title National Practice Area, and the judge principally responsible for Native Title case management in Western Australia.



Mr Robert Blowes SC

Robert Blowes is a barrister who for 35 years has represented Aboriginal people and Torres Strait Islanders in the preparation, litigation, negotiation and mediation of claims to have their traditional rights in land and waters recognised and protected in many parts of Australia. In the course of his career Robert has had the privilege of working with very many of Australia's leading expert anthropologists.



Mr Joshua Creamer

Joshua is Waanyi and Kalkadoon, growing up in Mount Isa and Central Queensland. In 2009 he was an Associate to the late Justice Dutney in the Supreme Court of Queensland. In 2011 he commenced practice as a Barrister. Joshua specialises in matters that involve Indigenous Australians. In 2016, he was recognised by Chambers Asia-Pacific as one of Australia's Outstanding Young Lawyers. For the past three years, he has also been recognised by the Doyle's Guide list as one of the leading Native Title Barristers in Australia.



Dr Julie Finlayson

Julie Finlayson is an anthropologist who has held teaching and research positions at La Trobe University and at the Australian National University, as well as an executive role in Indigenous program areas of the Australian Public Service. Her consultancy work has focused on a number of applied fields: cultural tourism, native title, organisational change management, reviews of successful Indigenous organisations, including legislative reviews – with, and for Australian Aboriginal people. She has worked for the National Native Title Tribunal, native title representative bodies and the Central Land Council, and has taught short professional development courses in native title. In recent years Julie has sought on-ground community-based work in north and western New South Wales (NSW). She is currently Research Fellow at the Centre for Native Title Anthropology and former president of the Australian Anthropological Society.



Mr Vance Hughston SC

Vance Hughston came to the NSW Bar in 1982. He was appointed Senior Counsel in 2001. Mr Hughston has extensive experience in native title law at both trial and appellate level including arguing appeals in the High Court. He has appeared in native title matters in most Australian States and Territories for both native title claimants and for Government parties. In 2014–2015 Vance was a member of the Australian Law Reform Committee's Native Title Inquiry Advisory Committee. Other areas of practice include appellate, property, equity, commercial and public law.



Speaker Biographies

The Hon John Mansfield AM QC

John Ronald Mansfield was appointed to the Federal Court of Australia in September 1996. He was appointed Queen's Counsel for South Australia (SA) in 1985 and Queen's Counsel for the Northern Territory in 1988. He was President of the South Australian Law Society 1988-1989, President of the Law Council of Australia from 1993-1994, Chairman of the Legal Aid Committee for the Law Council of Australia from 1986-1994, Chairman of the SA Legal Services Commission 1995-1996 and Chairman of the Third Party Premiums Committee (South Australia) from 1986-1996. During 1991-1993 Justice Mansfield held the role as Counsel assisting the Commissioner, and later was Commissioner of the Royal Commission into the State Bank of South Australia. He was appointed a Member of the Order of Australia in the Queen's Birthday Honours in 2009. Justice Mansfield was appointed the Aboriginal Land Commissioner in 2011, and continues to serve in this role. His Honour's final decision prior to retiring from the Court on 24 August 2016 was in relation to the landmark native title compensation matter *Griffiths v Northern Territory (No.3)*.



Dr Pamela McGrath

Pamela McGrath is Research Director at the National Native Title Tribunal and has previously been a Research Fellow with the Native Title Research Unit at the Australian Institute of Aboriginal Torres Strait Islander Studies (AIATSIS). Pamela has over 15 years experience in native title claim research and policy analysis, and helped establish the Centre for Native Title Anthropology in 2010. Pamela's recent publication, *The Right to Protect Sites: Indigenous Heritage Management in the Era of Native Title* (AIATSIS, 2016), is an edited anthology of interdisciplinary essays about the management of place-based Indigenous heritage in the era of native title. Pamela is an Adjunct Fellow with the National Centre for Indigenous Studies at the Australian National University and is currently the President of the Australian Anthropological Society.



Prof Francesca Merlan

Professor of Anthropology at Australian National University since July 1995, Francesca Merlan has worked with indigenous communities in the Katherine region of the Northern Territory since 1976, in Papua New Guinea since 1980, and in Germany and other parts of Europe since. She has been involved with a number of matters under the *Aboriginal Land Rights (Northern Territory) Act* (1976) as well as native title matters in Victoria and the Northern Territory. Francesca has long been interested in social change in Indigenous Australia and the legal requirements concerning continuity. Her published and in-progress books include *Caging the Rainbow: Places, Politics and Aborigines in a North Australian Town* (University of Hawaii 1998); *People and Change in Indigenous Australia* (co-edited with Diane Austin-Broos, forthcoming, University of Hawaii); and *Dynamics of Difference: Indigenous Past and Present in a Settler Country* (under review, University of Pennsylvania).



Dr Kingsley Palmer

Kingsley Palmer has worked in many areas of Aboriginal Australia including the Northern Territory, Queensland, Western and South Australia. Formerly Senior Anthropologist with the Northern Land Council, he was appointed Director of Research at the Australian Institute of Aboriginal Studies in Canberra in 1985, and held the post of AIATSIS Deputy Principal until 2001. He is now a private anthropological consultant. Kingsley has been involved in numerous native title claims over the last twenty years and has authored expert anthropological reports and given evidence in the Federal Court. Kingsley has also undertaken anthropological research and provided expert evidence for a number of other matters including cases brought in relation to the *Aboriginal Land Rights (Northern Territory) Act* (1976), criminal trials as well as undertaking research in relation to social impacts, community planning and management. He recently published a revised version of his expert report prepared for the combined Noongar native title application, *Noongar People, Noongar Land* (AIATSIS 2016).



Speaker Biographies

Prof David Trigger

David Trigger is Professor of Anthropology at The University of Queensland. His research interests encompass the different meanings attributed to land and nature across diverse sectors of society. His research on Australian society includes projects focused on a comparison of pro-development, environmentalist and Aboriginal perspectives on land and nature. In Australian Aboriginal Studies, David has carried out more than 35 years of anthropological study on Indigenous systems of land tenure, including applied research on resource development negotiations and native title. He is the author of more than 60 major applied research reports and has acted as an expert witness in multiple native title claims and associated criminal matters involving Aboriginal customary law. David is the author of *Whitefella comin': Aboriginal responses to colonialism in northern Australia* (Cambridge University Press) and a wide range of scholarly articles.



Ms Petronella Vaarzon-Morel

Petronella Vaarzon-Morel is Research Associate at the Conservatorium of Music, the University of Sydney, and lectures in Anthropology of Indigenous Australia at New York University Sydney (Adjunct Faculty). She has worked with Aboriginal people in Central Australia since 1976, and has been involved in the preparation of Aboriginal land claims and native title matters in the Northern Territory, Western Australia and Queensland. She has authored many consultant anthropological reports and provided evidence in the Royal Commission into Aboriginal Deaths in Custody; *Aboriginal Land Rights (Northern Territory) Act* (1976) hearings; the Family Court of Australia; the Supreme Court Northern Territory; and the Federal Court of Australia. Petronella's latest publication is 'Continuity and Change in Warlpiri Practices of Marking the Landscape', in William Lovis and Robert Whallon (eds.), *Marking the Land: Hunter-Gatherer Creation of Meaning in their Environment* (Routledge Studies in Archaeology, New York, 2016), pp. 201–230.



Ms Raelene Webb QC

Raelene Webb was appointed President of the National Native Title Tribunal in 2013 after a distinguished career as a barrister. Over the course of her career at the Bar Raelene appeared as lead counsel in many native title and Aboriginal land matters, and advised upon and appeared in the High Court in most land-mark cases on the judicial interpretation and development of native title law since the decision of *Mabo v Queensland (No 2)*. She is a fellow of the Australian Academy of Law and was awarded the Law Council of Australia President's Medal in 2014 in recognition of her outstanding contribution to the legal profession in Australia. Raelene is in great demand as a public speaker and has presented or chaired sessions at various conferences throughout Australia and internationally, including at the 2015 and 2016 Annual World Bank Conference on Land and Poverty. In April 2015 she delivered the annual Sir Frank Kitto Lecture at the University of New England.



Photo Gallery



*Mr Barry McGuire,
Welcome to Country*



*Guests at 25 Years of Native Title
Anthropology Seminar*



*Dr Debbie Fletcher and
Vance Hughston SC*



Dr Kingsley Palmer



Dr Lee Sackett



*Hon Eric Ripper AM and
Ian Viner AO QC*



Justice John Mansfield



*Jeff O'Halloran, Vance Hughston SC,
Greg McIntyre SC and
Hon Eric Ripper AM*



*John Lyne and
Professor Julie Finlayson*



Justice Michael Barker



*Justice Barker, Professor Dan Vachon
and Rob Powrie, Acting
Native Title Registrar*



*Justice Neil McKerrarcher and
FCA Registrar Ann Daniel*



Mr Joshua Creamer



Ms Petronella Vaarzon-Morel



*Anna Courtman, Mary McIntosh,
Caitlin Louth and Aisyah Ishak*



*Dr Pamela McGrath and
Tom Keely SC*



*Raelene Webb QC,
NNTT President*



*Guests, 25 Years of Native Title
Anthropology Seminar*



*Raelene Webb QC and Professor
Dan Vachon*



*Raelene Webb QC and Professor
Nicolas Peterson, ANU*



Professor David Trigger



*Professor John Stanton,
Dr Dianne Smith, Dr Katie Glaskin
and Ms Kara Dunn*



Professor Julie Finlayson



*Professor Peter Dutton and
Justice Michael Barker*

Shared country | shared future

**For more information about native title and
services of the Tribunal please contact:**

National Native Title Tribunal
GPO Box 9973 in your capital city
Freecall 1800 640 501

www.nntt.gov.au

Published by the National Native Title Tribunal © Commonwealth of Australia, 2017.

ISBN 978-0-9804201-9-7

This fact sheet is provided as general information and should not be relied upon as legal advice for a particular matter.