

## INDEX

- Aboriginal and Torres Strait Islander Commission, 2, 39, 260, 290, 298
- Aboriginal and Torres Strait Islander Social Justice Commissioner, 199, 253, 254, 264–265
- Aboriginal Economy and Society* (Keen), 144
- Aboriginal Land Commissioner, 83, 84–85, 205
- Aboriginal land councils *see* land councils
- Aboriginal Land Fund, 281
- Aboriginal Land Fund Commission, 87
- Aboriginal Land Rights Commission *see* Woodward Royal Commission
- Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), 15, 82–87, 271, 295–296
- comparison with *Native Title Act*, 75–76, 204
- land claims process, 204–205
- Reeves review, 296
- Aboriginal sites, 85, 89, 189–190
- Aboriginal society *see* ‘society’ (terminology)
- Aboriginal territory (proposed), 284
- Aboriginal title (Canada), 44–45, 66–67 *see also* native title
- acculturation, 8, 181–182
- Adeyinka Oyekan v Musendika Adele* [1957], 94, 95
- administrative tribunals, 76
- adversarial system, 27–28, 50
- adverse dominion, 59–61
- agreements, 116, 136, 175, 177–178
- administrative costs of, 195
- ILUAs, 108, 130–132, 137, 172, 177, 182, 201, 247, 301
- under *Native Title Act*, 130–135, 186–197
- with native title and non-native title outcomes, 221–228
- treaty (proposed) between Australian Government and Aboriginal and Torres Strait Islander peoples, 283–284
- where there is legal uncertainty, 235–236
- ALRA *see* *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
- Altman, Jon, 259, 300
- Amodu Tijani v The Secretary, Southern Nigeria* [1921], 81, 95
- Anaya, James, 258
- anthropology, 6, 139–158, 176, 178–179
- Argyle Diamond Mine agreement, 177–178, 187, 189
- assimilation, 163, 164–165
- ATSIC *see* Aboriginal and Torres Strait Islander Commission
- Attorney-General, 1, 8, 198–199, 218, 219, 221, 222, 225, 228–229, 234, 236, 248, 263–264, 294
- Attorney-General’s Department, 185–186, 208, 232, 239–240
- Australia Book* (Pownall), 69
- Australian Aborigines* (Maddock), 144
- Australian Constitution, 88–89, 91, 98, 100
- Australian government *see* Commonwealth government
- Australian Human Rights Commission, 276–277 *see also* Human Rights and Equal Opportunity Commission
- Australian Law Reform Commission on the Recognition of Aboriginal Customary Laws, 95
- Australian Mining Industry Council, 37
- autonomy *see* regional autonomy; self-determination
- Badimia people’s declaration of principles for engagement with resource developers, 121, 125–126
- banking services, 297–299
- Basten, J, 3, 4
- Beattie, J, 145
- Beaumont, J, 55, 57–58, 60, 61–62, 64–65, 66
- Benham, James, 108, 109
- Berndt, R.M, 147, 150
- bijuralism, 6–7, 175–176, 177–179, 181–182
- Bill of Rights (USA), 165
- Blackburn, J, 72, 80–81, 294–295
- Blue Mud Bay mob, 14
- bodies corporate, defined, 170 *see also* Prescribed Bodies Corporate
- ‘boundaries’ concept, 150–152, 155–156
- Brandy v Human Rights and Equal Opportunity Commission*, 104, 107
- Brennan, Frank, 74
- Brennan, J, 42, 43, 71, 86, 89
- on courts, 113
- on extinguishment, 96–97
- Mabo* [No. 1], 91
- Mabo* [No. 2], 56, 59–60, 61, 62, 63, 72–73, 93, 95, 295
- on race power, 89–90
- on traditional ownership, 85–86
- Walden v Hensler*, 70
- Western Australia v Commonwealth* (1995), 100–101
- Wik*, 60, 62, 63
- Bringing Them Home* report, 15

- broadcasting, 20–21  
 Browse Gas, 186–187  
 bundle of rights concept, 57–58, 62–65  
 Bureau of Indian Affairs (USA), 167–168  
 Burke, Paul, 139  
 Butler, Mark, 262  
 Byers, Sir Maurice, 88, 89
- Callinan, J  
     *Fejo*, 109  
     *Ward*, 136  
     *Yanner*, 112
- Calma, Tom, 8, 10, 11, 199, 276  
 Canada, 42, 44–45, 94, 163, 176, 195, 299  
 Cape York Land Council, 34  
 Cape York, Qld, 130  
 Carr, J, 180, 236  
 Castan, Ron, 78–79, 82, 84, 87–92, 100, 103, 105, 109, 113, 115  
 Centre for Aboriginal Economic Policy Research, 42  
 CERD *see* Committee on Elimination of Racial Discrimination  
 certainty, 37–38, 51  
 chthonic law, 160–169  
 Clark, Geoff, 39  
 Clavero, Bartholomé, 168  
 COAG *see* Council of Australian Governments  
 coastal regions, 186–188, 190 *see also* offshore resources; offshore waters  
 coexistence, 36, 59, 61, 65, 66–67, 106–107, 113–114  
 collective action *see* working together  
 colonial legal and political systems, 14, 70, 79, 81, 94  
     German (New Guinea), 82  
     impact on Indigenous people, 28–29  
 colonisation, 69, 80–81, 92  
 commitment, 29–31  
 Committee on Economic, Social and Cultural Rights (UN), 258, 274, 275–276  
 Committee on Elimination of Racial Discrimination (UN), 39, 271, 282  
 common law and native title, 46–48, 51, 58, 67–68, 72, 92–93, 270  
 common law rights, 37, 38–39, 42–44  
     discourse and publications on, 41–42  
 Commonwealth Constitution, 88–89, 91, 98, 100  
     empowered to make laws for Indigenous Australians, 15, 88  
     external power, 88–89  
     race power, 87–92, 100, 102, 108  
 Commonwealth government, 14  
     encouraged opposition to recognition of native title, 15  
     laws validated by NTA, 99  
     role in native title system, 228–229, 276  
     and Tangentyere land, 16  
     working with (challenges), 185–186  
 Commonwealth of Australia *see*  
     Commonwealth Constitution; *see*  
     Commonwealth government  
*Commonwealth v Tasmania* (1983), 89, 100, 102  
*Commonwealth v Yarmirr* (2001), 112  
     *see also* Croker Island people  
 communal title, 8–9, 54, 55–57, 72, 172–173, 290, 294–297  
 ‘community’ (terminology), 6, 139, 141–158  
     anthropological criteria, 144  
     in Australian Aboriginal studies, 145–146  
     legal criteria, 143–144  
 community benefit from agreements, 196–197  
 community development, 123, 184–185, 188–189, 197  
 compensation, 91, 96, 98–99, 100, 108, 285  
     achievements in Kimberley, 188–189, 196  
     denied, 27, 70, 83, 90  
     in determinations, 200  
     New Guinea, 82  
     principle in proposed national land rights legislation, 272  
     and UN Declaration, 257, 281  
 connection with land, 4, 62, 72, 76, 128–130, 219–221  
     establishment of, 206–207  
     inquiry and review, 241–244  
     nature of recognition in common law, 94–98  
     severed by non-Indigenous law, 111–112  
 Connor, Michael, 70–71, 75  
 consent determinations, 104–105  
 Constitution of Australia, 88–89, 91, 98, 100  
 consulting industry, 41  
*Cooper v Stuart*, 80–81  
 Council of Australian Governments  
     principles for service delivery to Indigenous Australians, 292, 293–294  
     whole-of-government processes, 133–134, 137–138  
 courts, Brennan on, 113 *see also* Federal Court; High Court  
 Croker Island people, 14  
     *see also* Yarmirr  
 ‘Cult of Disremembering’, 79  
 cultural awareness initiatives, 191  
 ‘cultural bloc’ concept, 147–148  
 cultural cohesion (model for society), 153  
 cultural sites *see* Aboriginal sites

- Dambimangari people, 190  
 Davidson, DS, 149–150, 151  
 Dawson, J, 72–73, 75, 86, 100–101  
 De Jersey, Paul, 88  
*De Rose v State of South Australia* [2002], 137  
 Deane J, 46, 86, 89  
   *Mabo* [No. 2], 56, 63, 72–73, 94, 95  
   *Tasmanian Dam* case, 102  
   *Western Australia v Commonwealth* (1995),  
   100–101  
 declarations, 120–121  
*Delgamuukw* decision, 44–45, 66–67, 172–173  
 demography, 25  
 Department of Families, Housing, Community  
 Services and Indigenous Affairs, 208,  
 239–240  
 Department of Prime Minister and  
 Cabinet, 75  
 determinations, 170–171, 185, 186, 200–201  
   Martu, 133, 134  
   partial, 237–238  
   Tjurabalan, 133–134  
   trends and forecast, 202–205  
   variations, 235–236  
 Dillon, Mike, 300  
 discrimination *see* racial discrimination  
 Dodson, Mick, 10–11, 118, 257  
 Dowsett, J, 215, 249  
 Dreyfus, Mark, 262  
 Drummond, J, 233  
*Duro v Reina*, 164
- economic development, 76–77, 187–191,  
 297–300  
 economic exclusion of Indigenous Australians,  
 289–292, 296–301  
 economic independence, 8–9, 297–300  
 education, Western versus Indigenous, 166, 169  
 electorate, 25, 27 *see also* public reaction  
 employment preference for Indigenous people  
 (USA), 167–168  
 engagement  
   negotiation tips, 191–195  
   principles for engagement with resource  
   developers, 125–126  
 equality/inequality *see* non-discrimination  
   principle; racial discrimination; self-  
   determination  
 equity in ventures/developments, 188,  
 190–191, 196, 223, 299, 300  
 Escobar, Arturo, 145  
 ethnography, 145–146, 149–150, 152,  
 154–155, 178
- evidence, Federal Court rules, 80  
 evidence of traditional ownership *see* native  
   title claims: standards of proof  
 ‘exclusivity’, 64–67, 133–134  
 executive acts *see* legislative or executive acts  
   of extinguishment  
 Expert Mechanism on the Rights of  
 Indigenous Peoples, 257, 258  
 external affairs power of Commonwealth,  
 88–89  
 extinguishment, 61–62, 73–74, 76, 92, 96–98,  
 99, 111  
   areas of Australia, 205–206, 221–222  
   Brennan, J on, 96–97  
   and Crown grants, 74  
   doctrine of, 14, 129  
   in *Fejo*, 97  
   and freehold title, 109–111  
   general principles, 59  
   as metaphor, 65–66  
   modes of, 101–102  
   New Zealand, 27  
   NTA 1998 amendments, 108  
   NTA definition, 97–98  
   partial, 52, 62–65, 99  
   principle, 101  
   protection against, 37–38  
   statutory, 98, 108  
   tests of, 59–61, 105
- FAIRA *see* Foundation for Aboriginal and  
 Islander Research Action  
*Fauna Conservation Act 1974* (Qld), 111  
 Federal Court, 104–105, 108, 202, 208  
   on connection to claimed area, 206  
   grouped claims, 251  
   and native title outcomes, 233–234, 235,  
   246–251  
   rules for giving evidence, 80  
   *Ward* decision *see Western Australia  
   v Ward* (2000)  
 Federal government *see* Commonwealth  
 government  
 fee simple *see* grant in fee simple  
*Fejo v Northern Territory of Australia* (1998), 61,  
 62, 63, 65, 66, 74, 97, 108–111, 119  
 Ferguson, Martin, 218  
 fiduciary duty, 85, 86, 106  
 financial management and benefit-sharing,  
 196–197  
 financial resources  
   innovative programs, 298–299  
   lack of, 297 *see also* funding

- financial services, 297–299  
 Fingleton, JS, 170  
 fishing and hunting rights, 20, 111, 261, 302  
 foreshore and seabed, title in (NZ), 27, 302  
   *see also* offshore waters  
 Foundation for Aboriginal and Islander  
   Research Action, 269–270  
 Fraser government, 271  
 freehold title, 66, 99, 188, 272  
   and extinguishment, 61, 63, 109–111  
 French, J, 3, 4, 65, 88, 117, 119, 180, 236,  
   263, 283  
 funding  
   administrative costs of agreements, 195  
   for negotiation and engagement, 192–193  
   Prescribed Bodies Corporate, 174, 178  
   *see also* financial resources
- Gajerrong people *see* Miriuwung Gajerrong  
 people  
 gas fields, 186–187, 188, 259 *see also* resources  
 Gaudron, J, 46, 48  
   *Fejo*, 109  
   *Mabo* [No. 1], 91  
   *Mabo* [No. 2], 56, 63, 72–73, 94, 95  
   *Western Australia v Commonwealth* (1995),  
   100–101  
   *Wik*, 60, 61, 113  
   *Yanner*, 53, 111  
 genealogies, 179–180  
 Gibbs, CJ, 90  
 Gleeson, J  
   *Fejo*, 109  
   *Ward*, 127  
   *Yanner*, 53, 111  
   *Yorta Yorta*, 45–46, 47, 48  
 Glenn, H Patrick, 161–162  
 globalisation of Australian law, 88, 93  
 Gordon River, Tasmania, 89  
 Gove Land Rights case (*Milirrpum v Nabalco*),  
   72, 73, 82, 294–295  
 governance arrangements for PBCs, 174–175,  
   176, 178  
 government *see* Commonwealth government;  
   state and territory governments  
 grant in fee simple, 60, 61, 63, 66  
   and extinguishment, 97, 101, 109–111  
 Gray, K and SF, 53, 58, 65  
 ‘Great Australian Silence’, 79  
*Griffiths v Northern Territory of Australia*  
   [2006], 153  
 Gummow, J  
   *Fejo*, 109  
   *Wik*, 60, 61, 79, 94, 106, 113  
   *Yanner*, 112  
   *Yorta Yorta*, 45–46, 47, 48
- Haase, Barry, 263  
 Hanger, Ian, 88  
 Hawke government, 271–272  
 Hayne, J  
   on *Fejo*, 109  
   on *Yanner*, 53, 111  
   on *Yorta Yorta*, 45–46, 47, 48  
 Herzfeld, Michael, 145  
 High Court  
   members of *Fejo* Court, 109  
   members of *Mabo* Court, 86  
   role in native title recognition, 78–114  
 High Court decisions  
   concerning Tribunal consent  
   determinations, 104–105  
   Courts’ responses to native title cases, 42–48  
   land rights litigation, 84–87  
   language of, 3, 73–74  
   limits to achievement, 112–114  
   *Mabo* *see* *Mabo v Queensland* [No. 2] (1992)  
   *Miriuwung Gajerrong* *see* *Miriuwung Gajerrong*  
   decision  
   *Wik* *see* *Wik Peoples v Queensland* (1996)  
   *Yanner v Eaton* *see* *Yanner v Eaton*  
   *Yorta Yorta* *see* *Yorta Yorta* decision  
 history and historians, 70  
 ‘horde’ concept, 149, 151  
 Horner, Phillipa, 75  
 House of Representatives Standing Committee  
   on Economics, Finance and Public  
   Administration, 297  
 housing/home ownership programs, 298–299  
 Howard, John, 17, 295  
 Howard government, 74–75, 290  
 human rights, 8, 120, 121, 159–160, 256–260,  
   272–276 *see also* racial discrimination  
 Human Rights and Equal Opportunity  
   Commission, 104 *see also* Australian Human  
   Rights Commission  
 Human Rights Committee (UN), 258, 275  
 Human Rights Council (UN), 258  
 hunting rights *see* fishing and hunting rights
- identity, 29–31  
 identity labels (native title groups), 177  
 IHRNA *see* Indigenous Human Rights  
   Network of Australia  
 ILO *see* International Labour Organization  
 ILUA *see* Indigenous Land Use Agreements  
*In re Southern Rhodesia*, 42–44, 58, 71–72, 73,  
   81, 95

- inconsistency, 59–61, 62, 76, 105  
*Indian Civil Rights Act 1968 (USA)*, 165  
 Indian nations (USA), 160–169, 299  
*Indian Reorganization Act (USA)*, 164, 167  
 Indigenous Affairs Advisory Committee (WA), 132–133  
 Indigenous Australians  
   areas of Australia owned/controlled, 284  
   economic exclusion of, 289–292, 296–301  
   law and customs *see* traditional law and custom  
   non-Indigenous relations with, 137  
   representative bodies, 8, 40, 255, 260–261 *see also* land councils; native title corporations; native title representative bodies  
   responses to *Mabo* decision, 40–42  
   social and cultural organisation, 42–44  
 Indigenous communities  
   declarations of sovereignty, 120–121  
   economic independence, 8–9, 297–300  
   greed and conflict, 11, 40–41  
   mechanisms for involvement in land management/jurisdiction, 135  
   negotiation tips, 191–195  
   principles for engagement with resource developers, 125–126  
   relationships with government (NZ), 31  
   services for *see* service provision to Indigenous communities  
   ‘society’/‘community’ terminology, 139–158  
   working with Commonwealth government (challenges), 185–186  
 Indigenous Human Rights Network of Australia, 260  
 Indigenous Land Corporation, 76  
 Indigenous Land Fund, 288  
 Indigenous Land Use Agreements, 108, 130–132, 137, 172, 177, 182, 201, 247, 301  
 Indigenous languages *see* language and language groups  
 Indigenous law  
   Australia *see* traditional law and custom  
   USA *see* traditional law (Indian nations, USA)  
 Indigenous peoples, 278  
   Australia *see* Indigenous Australians  
   international forums, 257–258, 274–275  
   rights in international law, 88, 120, 159–160, 258–260, 272–277, 278–282  
   USA, 160–169  
   *see also* United Nations Declaration on the Rights of Indigenous Peoples  
 Indigenous Peoples’ Organisations of Australia, 259  
 Indigenous policy, 11, 27–28, 219, 225, 254–256, 261–266, 283–286, 290–293  
 interdependence, 29–31  
 International Convention on the Elimination of All Forms of Racial Discrimination, 39, 271, 282  
 International Covenant on Civil and Political Rights, 258  
 international credibility and standing, 25  
 international forums, 256–257, 274–275  
 International Labour Organization  
   Convention 169, 280  
 international law, 88, 120, 159–160, 258–260, 272–277, 278–282  
*Invention of Terra Nullius* (Connor), 70–71, 75  
 investment, 298–300  
 ‘jural native title’, 118–124 *see also* native title  
 jural right, 3, 5, 53–54, 55, 57–58, 62–63, 111  
 Kahn, P, 272  
 Keating, Paul, 25, 124  
 Keen, Ian, 144, 150–151  
 Kija people, 177, 189, 191  
 Kimberley Land Council, 7, 183–197, 259  
 Kimberley Nickel Mines, 191  
 Kimberley region, WA, 130, 133–134, 152, 183–197  
 Kirby, J, 48  
   *Fejo*, 119  
   *Wik*, 61, 105–106, 110, 113  
   *Yanner*, 53, 111  
 KLC *see* Kimberley Land Council  
 knowledge, Western versus Indigenous, 166, 169  
 Koolan Island, 190  
*Koowarta v Bjelke-Petersen* (1982), 87–88, 100  
 Lamer CJ (Canada), 66–67, 172  
 land, connection with *see* connection with land  
*Land Act 1962* (Qld), 87  
 land claims  
   New Zealand, 20, 302  
   Northern Territory, 204–205  
 land councils, 172, 174, 192 *see also* Kimberley Land Council  
 land ownership concepts, 43–44 *see also* property  
 land rights, 36  
   Aboriginal/Torres Strait Islander territory (proposed), 284  
   land justice, 9, 11, 36 *see also* ‘transitional justice’  
   legislation proposed, 271–272

- litigation (NT), 84–87 *see also* *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)  
 new forms of title (proposed), 12, 284  
 state statutes, 83, 261, 281  
 statutory, 82–87  
 and UN Declaration, 277–282  
*see also* native title
- Land Rights Act of 1976 *see* *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
- Land (Titles and Traditional Usage) Act 1993* (WA), 37, 99–100
- language and language groups, 147–153  
 Indigenous languages broadcasting, 21  
 and ‘tribes’ concept, 148–150
- Landil and other Peoples v Queensland* [2001], 65, 98
- Larrakia Development Corporation, 76–77
- Larrakia people, 108–109
- Law Council of Australia, 263
- leadership, 9–10, 16, 29  
 lack of, 40–41
- leases, 37, 60–62, 99, 105–108, 112, 113
- Lee, Tony, 116
- Lee, J, 56–57, 59–61, 62, 64, 67
- legal discourse, 41–42
- legal industry, 41
- legal pluralism, 176 *see also* bijuralism
- legislative drafting, 75
- legislative or executive acts of extinguishment, 59–60, 62
- legitimacy *see* moral legitimacy
- local government, 133, 134
- Mabo, Eddie, 2, 14, 20, 33, 36, 268–269, 289
- Mabo v Queensland [No. 1]* (1988), 90–92
- Mabo v Queensland [No. 2]* (1992), 14, 25, 33–48, 58, 64, 69–77, 91, 92–98, 127, 128, 270, 288, 295  
 exclusivity, 66, 67  
 extinguishment, 59–60, 62–64  
 interest in land, 52, 54–56, 72 *see also* connection with land  
 limitations of ‘recognition’, 78–114  
 members of *Mabo* Court, 86  
 occupancy, 67  
 politics and perceptions, 74–75  
 possessory title, 54  
 property, 67–68  
 recognition of common law native title, 92–98, 270  
 responses to, 37–48, 74–75, 283, 288–289  
 weaknesses, 76–77
- Macklin, Jenny, 199, 218, 248 *see also* Minister for Families, Housing, Community Services and Indigenous Affairs
- MacLeod, Bobby, 267
- Maddock, Ken, 144
- Malezer, Les, 8, 39
- Mantziaris, C, 170–171
- Māori fisheries litigation, 20
- Māori King’s ‘rebellion’, 20, 23–24
- Māori Land Court, 27
- Māori language broadcasting, 21
- Māori opposition to colonisation, 20
- Māori Party, 27
- Māori population, 25
- Maralinga lands, 171
- Marks, Greg, 39
- Martin, D, 170–171
- Martu people, 100, 133–134, 137
- Mason, J, 86, 89  
*Mabo* [No. 2], 93  
*Western Australia v Commonwealth* (1995), 100–101
- McClelland, Robert, 198–199, 218, 219, 221, 222, 225, 228–229, 234, 236, 248, 263–264
- McGregor, Bill, 152
- McHugh, J  
*Fejo*, 109  
*Mabo* [No. 2], 93  
*Ward*, 136  
*Western Australia v Commonwealth* (1995), 100–101  
*Yorta Yorta*, 46
- McIntyre, Greg, 3
- McLachlin, J, 47
- McNeil, Kent, 42, 67, 172–173
- mediation, 108, 121–122, 202, 207, 213–218, 224, 235–243, 245 *see also* National Native Title Tribunal; negotiation
- Melham, Daryl, 263, 264
- Members of the Yorta Yorta Aboriginal Community v Victoria* (2002), 33, 35, 45–48, 51, 127, 128, 129, 141–143
- Meriam people, 14, 33, 36, 54, 55–56, 66, 90, 92, 262 *see also* *Mabo v Queensland [No. 1]* (1988); *Mabo v Queensland [No. 2]* (1992)
- Merkel J, 143, 199, 234
- Milirrpum v Nabalco Pty Ltd*, 72, 73, 82, 294–295
- miners *see* resource developers
- mines and mining, 37, 85, 86, 190, 196–197
- mining leases, 37, 99, 106–108, 112
- Minister for Families, Housing, Community Services and Indigenous Affairs, 1, 8, 199, 218, 248
- Minister for Resources and Energy, 218

- Ministerial Taskforce on Indigenous Affairs, 291
- Miriuwung Gajerrong* decision, 3, 33, 35, 48, 63, 112, 119, 127, 128, 129, 136
- Miriuwung Gajerrong people, 14, 177–178, 188–189, 233
- Mohr, R, 176
- Monaghan, P, 150
- moral legitimacy, 9, 22–23  
price of, 22, 25–26
- Morton, J, 139
- Morton v Mancari*, 167
- Moynihan, J, 56, 73
- municipal government *see* local government
- Murphy, J, 73, 89–90
- Murray Islands people *see* Meriam people
- ‘nation’, use and meaning of term, 145–146, 147
- National Aboriginal and Torres Strait Islander representative body *see* representative body (proposed)
- national Indigenous representative body, 8, 40, 255, 260–261, 266
- National Indigenous Working Group, 74–75
- National Native Title Council, 256, 265
- National Native Title Tribunal, 21, 42, 99, 104–105, 108, 109–110, 121–122, 202, 208, 238–246, 250–252 *see also* mediation
- native title  
benefits of recognition, 210–212  
as a bundle of rights, 57–58, 62–65  
claims *see* native title claims  
coexistence, 36, 59, 61, 65, 66–67, 106–107, 113–114  
and common law, 46–48, 51, 58, 67–68, 72, 92–93, 270  
communal title, 54, 55–57, 72, 172–173, 290, 294–297  
declarations, 120–121  
defined/described, 54, 65, 215  
discourse on common law meaning, 41–42  
and discrimination *see* racial discrimination  
economic value, 6, 7, 12, 44, 50, 76  
exclusivity, 64–67, 133–134  
extinguished *see* extinguishment  
High Court contribution, 78–114 *see also* High Court  
interest in land, 55–57  
judgment content, 113  
‘jural native title’, 4–5, 118–124  
limits of, 2–3, 128–129  
New Guinea, 82  
New Zealand, 20–32  
non-discrimination principle, 3, 12, 42–43, 73–74, 91, 99, 276, 279  
occupancy-based doctrine, 130  
principles, 92–93  
prior to *Mabo*, 80–92  
process *see* native title processes  
property concepts, 52–68  
recognition (nature and rules of), 94–98, 101, 111 *see also* native title processes  
responses to *Mabo* decision, 37–48, 74–75, 283, 288–289  
revival/non-revival, 4, 12, 61–62, 109–111  
social native title, 118–124  
surviving rights, 21, 28  
symbolism and function, 137–138  
system *see* native title processes  
*see also* Indigenous policy; land rights
- Native Title Act 1993* (Cth), 14, 34, 37–40, 74–75  
administration of *see* native title processes  
amendments, 38, 40, 49, 74–75, 107–108, 130–131, 202, 238–239, 262, 271  
comparison with *Aboriginal Land Rights (NT) Act*, 75–76, 204  
objectives, 98–99, 270–271  
Prescribed Bodies Corporate, 170–182  
reform challenges, 49–51, 184  
relationship with RDA, 102  
s 21, 130  
s 47A, 74  
s 47B, 74  
s 223(1), 42, 46–48, 57, 128  
strengths and failings, 37–40, 75, 198–200  
WA challenge, 37, 99–102
- Native Title Act* case *see* *Western Australia v Commonwealth* (1995)
- Native Title Amendment Act 1998* (Cth), 74–75
- Native Title Amendment Bill 2009* (Cth), 262–263
- native title and land rights laws, 261–264  
*see also* *Native Title Act 1993* (Cth)
- native title claims, 34–35, 76, 137, 198–252  
applications at May 2008, 201–202  
death of claimants, 180, 213  
determinations *see* determinations  
grouped claims, 251  
Kimberley Land Council strategy, 185–186  
mediation, 108, 121–122, 202, 207, 213–218, 224, 235–243, 245  
non-native title outcomes, 121–122, 294  
opposition to recognition of native title, 7, 14–15, 34–35, 37, 84–89, 137–138  
outcomes sought  
all parties, 232–238

- claimants, 209–214  
 claimants representatives, 214–218  
 other respondents, 229–232  
 overlapping claims, 207–208, 213–214, 244–245  
 parties to, 38–39, 180, 213, 230–231, 245  
 regional management, 216–217, 239–241, 250  
 resources and funding, 39, 214–215, 217–218, 231–232, 246, 251  
 standards of proof, 12, 45–46, 51, 55, 129–130, 207, 213, 215, 263–264, 286  
 trends and forecast, 202–205  
*see also* native title processes
- Native Title Conference 2002, 115–117
- native title corporations, 6–7, 170–182 *see also* Prescribed Bodies Corporate
- native title holding groups, 14, 17–18, 177–180  
*see also* Prescribed Bodies Corporate
- native title legal and consulting industry, 41
- native title processes, 2, 7–8, 40, 41, 48–50, 76, 98–99, 108, 180–181, 293–294  
 agreement-making, 116, 130–135, 136, 221–228, 235–236 *see also* agreements  
 anthropology and, 139–158  
 Commonwealth government role, 228–229, 276  
 comparison with NT land claims process, 75–76, 204  
 costs, 48–49, 127  
 deficiencies and opportunities, 8, 11–12, 49–51, 116–117, 127, 198–200, 205–209, 262–264, 277, 285–286  
 Federal Court role, 246–251  
 government role, 218–229  
 integrated system, 208–209  
 participants, 208  
 reporting and analysis, 245–246  
*Waanyi* case, 103–105, 109–110  
*see also* native title corporations; Prescribed Bodies Corporate
- Native Title Report*, 199, 265
- native title representative bodies, 172, 174, 184, 208, 213–218, 290
- negotiation, 7, 191–195 *see also* agreements; mediation
- Neowarra *see* Wanjinna–Wororra community
- Nevada v Hicks*, 164
- New Guinea, 82
- New South Wales (colony), 80–81
- New South Wales (state)  
 alternative settlements, 226  
 land rights statutes, 83  
 native title applications, 201–202
- New Zealand, 20–32, 94, 281
- Newcastle Waters case, 251
- Ngaanyatjarraku, Shire of, 133, 134
- Ngai Tahu people, 20
- Ngapil v Western Australia*, 180
- NIWG *see* National Indigenous Working Group
- non-discrimination principle, 3, 12, 42–43, 73–74, 91, 99, 276, 279 *see also* human rights; racial discrimination
- non-Indigenous Australians' responses to *Mabo* decision, 5, 35–36  
 to statutory land rights for Aboriginal people, 83–84
- non-native title outcomes, 121–122, 294
- Noongar people, 14–15, 133, 134–135, 137, 206
- North Ganalatja Aboriginal Corporation & Waanyi People v Queensland* (1996), 62, 102, 103–105, 109–110, 122
- North, J, 53, 58, 59, 64, 263
- Northern Queensland, 34
- Northern Territory, 14  
*Fejo* case, 108–111  
 land claims, 204–205  
 land rights litigation, 84–87  
 native title applications, 201–202  
*see also* *Milirrpum v Nabalco Pty Ltd*
- Oakeshott, Rob, 262, 263
- occupancy, 55–57, 63, 67, 130, 243–244
- O'Faircheallaigh, Ciaran, 186
- Office of Parliamentary Counsel, 75
- offshore resources, 186–187
- offshore waters, 37, 112, 279
- Olney, J, 51
- Operation of Native Title Representative Bodies* report, 174
- oral tradition, 79–80, 162, 164
- Ord Stage Two project, 188–189, 193  
*see also* Miriuwung Gajerrong
- Orr, Robert, 75
- 'Outcomes and Possibilities' Conference 2002, 115–117
- ownership *see* land ownership; land rights
- Papua and New Guinea (Territory), 82
- Parihaka movement, 23–24
- Parliamentary Joint Committee on Native Title and Torres Strait Islander Land Account, 174, 217
- Parliament's response to *Mabo* decision, 37–40, 74–75
- partial extinguishment, 52, 62–65, 99

- passive resistance, 24
- pastoral leases, 60–62, 99, 105–107, 112, 113
- paternalism, 167
- Patrick Stevedores Operations No. 2 Pty Ltd v Maritime Union of Australia*, 113
- PBCs *see* Prescribed Bodies Corporate
- Pearson, Noel, 2, 3, 5, 6, 9, 12, 98, 128, 130, 135, 138
- perpetual succession, 173, 175–176, 178–182
- Perth metropolitan area, 206
- Pilbara region, WA, 133–134
- Pitjantjatjara, 150, 171
- policy *see* Indigenous policy
- politics, 25–26, 27, 74–75, 115–116
- Pownall, Eve, 69
- practical commitment *see* commitment
- preference provisions for Indigenous people, in employment, 167–168
- Prescribed Bodies Corporate, 17–18, 171–182
- funding and governance, 174–175, 178
- number and diversity, 177
- requirements, 171, 176–177
- price of legitimacy *see* moral legitimacy
- Privy Council, 42, 71, 80–81, 94, 95
- property, 3, 52–68
- concepts of, 53–54
- and terra nullius, 81
- public reaction
- to *Mabo* decision, 5, 35–36
- to Māori rights, 25, 27
- to statutory land rights for Aboriginal people, 83–84
- Queensland, 14
- agreement-making, 130
- Koowarta* case, 87–89
- land rights statutes, 83, 261, 281
- Mabo* litigation *see Mabo v Queensland [No. 1]* (1988); *Mabo v Queensland [No. 2]* (1992)
- native title applications, 201–202
- Queensland Coast Islands Declaratory Act 1985*, 90
- R v Van der Peet* (1996), 45, 47
- race power of Commonwealth, 87–92, 100, 102, 108
- racial discrimination, 168–169, 282–283
- international concern for human rights, 39, 88
- and native title legislation, 39–40, 42–44, 271
- terra nullius, 3, 78
- see also* human rights; non-discrimination principle
- Racial Discrimination Act 1975* (Cth), 38, 39–40, 87–92, 102, 289
- and state law, 91–92
- validity challenge, 87–89
- Radcliffe–Brown, AR, 147
- radio, 20–21
- Ranger Project Area, Kakadu, NT, 85
- ‘reconciliation’, 44–46
- ‘redress’, 281, 285
- Reeves J, 296
- referendum of 1967, 15
- regional autonomy, 130, 133–135 *see also* self-determination
- regional management of claims, 216–217, 239–241, 250 *see also* native title claims; native title processes
- representative body (proposed), 8, 40, 255, 260–261, 266
- resource developers, principles for engagement with, 125–126
- resources, 5–6, 76
- development of, 186–187
- ownership of, 5–6, 52
- royalties, 75–76
- use/taking of, 5–6, 56, 57, 66
- Reynolds, Henry, 70
- Ridgeway, Aden, 2, 8–9
- Rights in Water and Irrigation Act 1914* (WA), 64
- Roth, WE, 147
- Rowley, CD, 83–84, 144
- royalties (minerals and resources), 75–76
- Rubibi* claim, 143, 234
- Rumsey, A, 150, 151
- sacred sites *see* Aboriginal sites
- Sampi v Western Australia* [2005], 180
- Sansom, B, 139
- seabed, title in (NZ), 27, 302 *see also* offshore waters
- self-determination, 6, 10, 11, 135–136, 255–256, 283, 285–286
- right of, 13–18, 120, 159–160, 276–277, 279
- US Indigenous nations, 159–169
- self-government, 133, 134, 135, 136
- self-sufficiency, 167–168
- service provision to Indigenous communities
- COAG principles, 292, 293–294
- failures in, 260
- impact of development, 187
- inaccessibility of services, 297–299
- whole-of-government approaches, 133–134, 135
- ‘setting things right’ *see* social native title
- Shire of Ngaanyatjarraku, 133, 134
- Skoien, Tony, 88
- Slattery, Brian, 42

- social impacts of development, 187  
social native title, 4–5, 118–124  
social problems, 169, 189  
‘society’ (terminology), 6, 139, 141–158  
    anthropological criteria, 144–145, 154  
    legal criteria, 141–144, 145  
    models of, in Australian Aboriginal studies, 146–154  
    models of, used by anthropologists, 157–158  
    in NTA context, 154–158  
South Australia  
    alternative settlements, 226  
    land rights statutes, 83, 261  
    opposition to native title claims, 137  
    state-wide ILUA, 132–133  
South West Aboriginal Land and Sea Council, 133, 134–135  
*In re Southern Rhodesia*, 42–44, 58, 71–72, 73, 81, 95  
sovereignty, 42–43, 70–71, 81, 92–93, 111, 129, 135–136, 216, 283  
    Indigenous declarations of, 120–121  
Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, 257–258  
Stanner, Bill, 41, 79  
state and territory governments  
    agreements under *Native Title Act*, 130–135  
    ministerial meetings, 219  
    opposition to recognition of native title, 7, 14–15, 34–35, 37, 84–89, 137–138  
    role in native title system, 225–228, 229  
state and territory laws, 37, 83, 91–92, 98, 99–100, 181, 261  
*Statement of Commitment* (WA government), 132–133  
statutory extinguishment, 99, 108  
statutory land rights, 82–87  
Stephen, Sir Ninian, 88  
Stolen Generations apology, 22–23  
Stolen Generations report, 15  
Strelein, Lisa, 70, 74, 118, 142  
*sui generis* character, 94–95, 98, 172  
Sumner, Lord, 58, 71–72, 81  
Sundberg, J, 153  
Supreme Court of Canada, 44–45, 47  
Sutton, Peter, 146, 147, 152  
symbolism, 5, 11–12, 25–26, 137–138  
Tainui raupatu settlement, 20  
Tangentyere land, 16  
Taranaki confiscation claims, 20  
Tasmanian Dam case, 89, 100, 102  
Tawhiao (Māori King), 20, 23–24  
Te Whiti o Rongomai, 24  
television and radio, 20–21  
terra nullius  
    doctrine of, 80–82  
    and *Mabo*, 70–71, 75  
    meanings, 71, 73  
    as racism, 3, 78  
    re-establishment of, 285  
    rejection of, 42–43, 93–94  
    reliance on notion of, 21  
‘territorial boundaries’ concept, 150–152, 155–156  
tests of extinguishment, 59–61, 105  
Thayorre people, 14, 105–106  
third-party interests, 38–39 *see also* native title claims: parties to  
Timber Creek society, 153  
Tindale, NB, 148, 150, 155–156  
Tjamu Tjamu Corporation, 177  
Tjurabalan Native Title Land Aboriginal Corporation, 180  
Tjurabalan people, 133–134, 137, 190–191  
Tohu Kakahi, 24  
Toohey, J, 86  
    on *ALRA*, 83  
    *Mabo* [No. 1], 91  
    *Mabo* [No. 2], 54, 67, 94, 95  
    *Wik*, 61, 62, 63, 97, 113  
Torres Strait Islander territory (proposed), 284  
tourism, 187–188  
traditional law and custom, 6, 42–44, 55–57, 65, 74, 96, 119, 124, 128–130  
    and colonial law, 14  
    evidentiary basis for, 178–179  
    expressions of, 79–80  
    *Fejo*, 110  
    and native title corporations, 175–182  
    New Guinea, 82  
    statutory land rights, 83–85  
    and terra nullius doctrine, 81–82  
    transmission, 180  
traditional law (Indian nations, USA), 161–169  
Traditional Owners, 16, 17–18, 76, 84–85, 86, 125–126, 193–197, 266  
‘transitional justice’, 2, 9–10, 21–32  
treaties, international *see* international law  
treaty (proposed) between Australian Government and Aboriginal and Torres Strait Islander peoples, 283–284  
Treaty of Waitangi, 20, 21, 23 *see also* Waitangi Tribunal  
*Treaty of Waitangi (Fisheries Claims Settlement) Act 1992* (NZ), 20  
tribal settlements (NZ), 20

- 'tribe', use and meaning of term, 145–146, 147, 148–152
- Tribes (Indian nations) *see* Indian nations (USA)
- United Nations Committee on Economic, Social and Cultural Rights, 258, 274, 275–276
- United Nations Committee on Elimination of Racial Discrimination, 39, 271, 282
- United Nations Declaration on the Rights of Indigenous Peoples, 8, 160, 254, 256–259, 268, 269–270, 273, 277–282
- United Nations Human Rights Committee, 258, 275
- United Nations Human Rights Council, 258
- United Nations Permanent Forum on Indigenous Issues, 257
- United States, 159–169, 299
- usufructuary rights, 54, 82, 95, 111–112
- Vanstone, Amanda, 295
- venture capital, 300 *see also* economic development; investment
- Victoria
  - alternative settlements, 8, 226
  - state-wide framework agreements, 132
- vision, 29–31, 197
- von Doussa J, 55, 57–58, 60, 61–62, 64–65, 66
- Waanyi* case, 62, 102, 103–105, 109–110, 122
- Waitangi Tribunal, 20, 21, 284 *see also* Treaty of Waitangi
- Walden v Hensler*, 70
- Wanjina–Wunggurr community, 153
- Ward v Western Australia* (1998), 56–57, 59–61, 64, 67
- Watson, Lord, 80–81
- wealth, basis of, 16–17
- Webber, Jeremy, 137
- Weber Plains, 193
- Weinberg J, 142–143, 153
- Western Australia, 14–15, 37, 95, 99–102, 112
- agreement-making, 130, 132–135, 186–197
- alternative settlements, 226
- native title applications, 201–202
- see also* Kimberley Land Council; Kimberley region; Western Desert region
- Western Australia v Commonwealth* (1995), 99–102
- Western Australia v Ward* (2000), 52, 53, 55, 57–58, 61, 62, 64–65
- Western Australia v Ward* (2002), 3, 33, 35, 48, 63, 112, 119, 127, 128, 129, 136
- Western Desert region, 133, 147–148, 150, 177
- whole-of-government approaches, 133–134, 135, 137–138, 219
- Wik people, 14
- Wik Peoples v Queensland* (1996), 60, 61–63, 105–107, 110, 113, 233
- Williams, Joe, 2, 5, 9–10
- Woodside, 187, 259
- Woodward Royal Commission, 82–83, 87, 271
- Wootten, Hal, 28, 116–117, 123
- working together, 11, 15–16, 25, 27, 184, 187, 197, 286
- World Heritage Properties Conservation Act 1983* (Cth), 89
- Wororra people, 100
- Yalanji people's claim, 34
- Yamatji Land and Sea Council, 125–126
- Yamatji Marlpa Land Council, 117
- Yanner v Eaton*, 53, 55, 57, 58, 111–112
- Yarmirr decision, 112; *Yarmirr* sea rights claim, 254
- Yawuru people, 14, 143
- Yazzie, Robert, 166
- 'yes, but' principle, 22–23
- Yorta Yorta* decision, 33, 35, 45–48, 51, 127, 128, 129, 141–143
- Yorta Yorta people, 15, 51
- Yulara* case, 139, 140
- Yunkunjatjara people, 137
- Yunupingu, Galarrwuy, 79–80