

Making Things Right: Collaboration and conflict since the Mabo decision.

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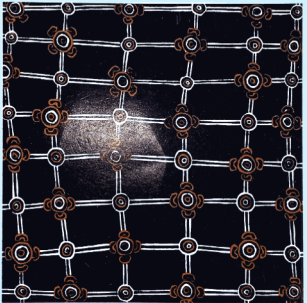
Centre for Native Title Anthropology



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MAKING THINGS RIGHT

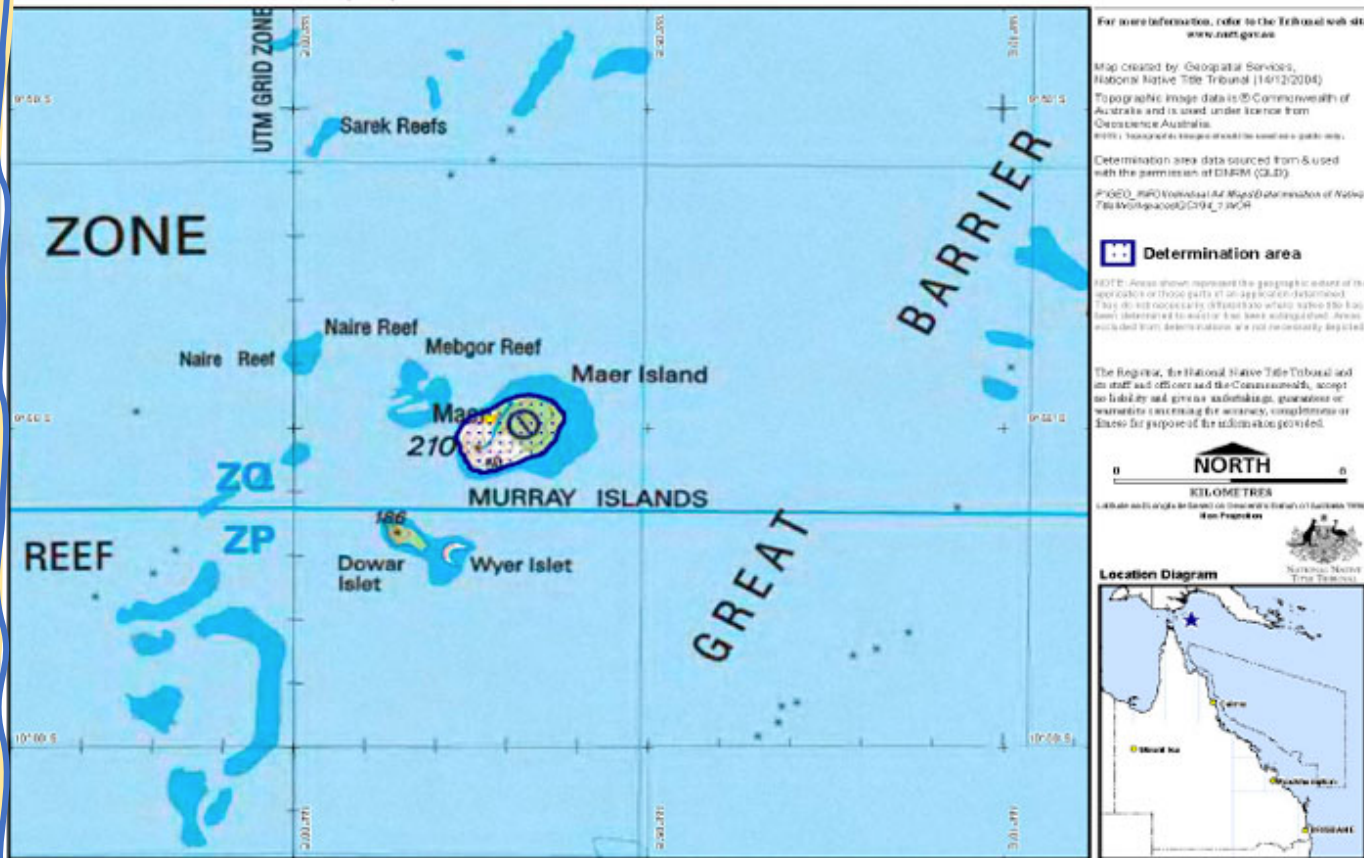
RECONCILIATION
AFTER THE HIGH COURT'S
DECISION ON NATIVE TITLE



COUNCIL FOR ABORIGINAL RECONCILIATION

June 1992

Determination of Native Title: Mabo (1992)



Key issues

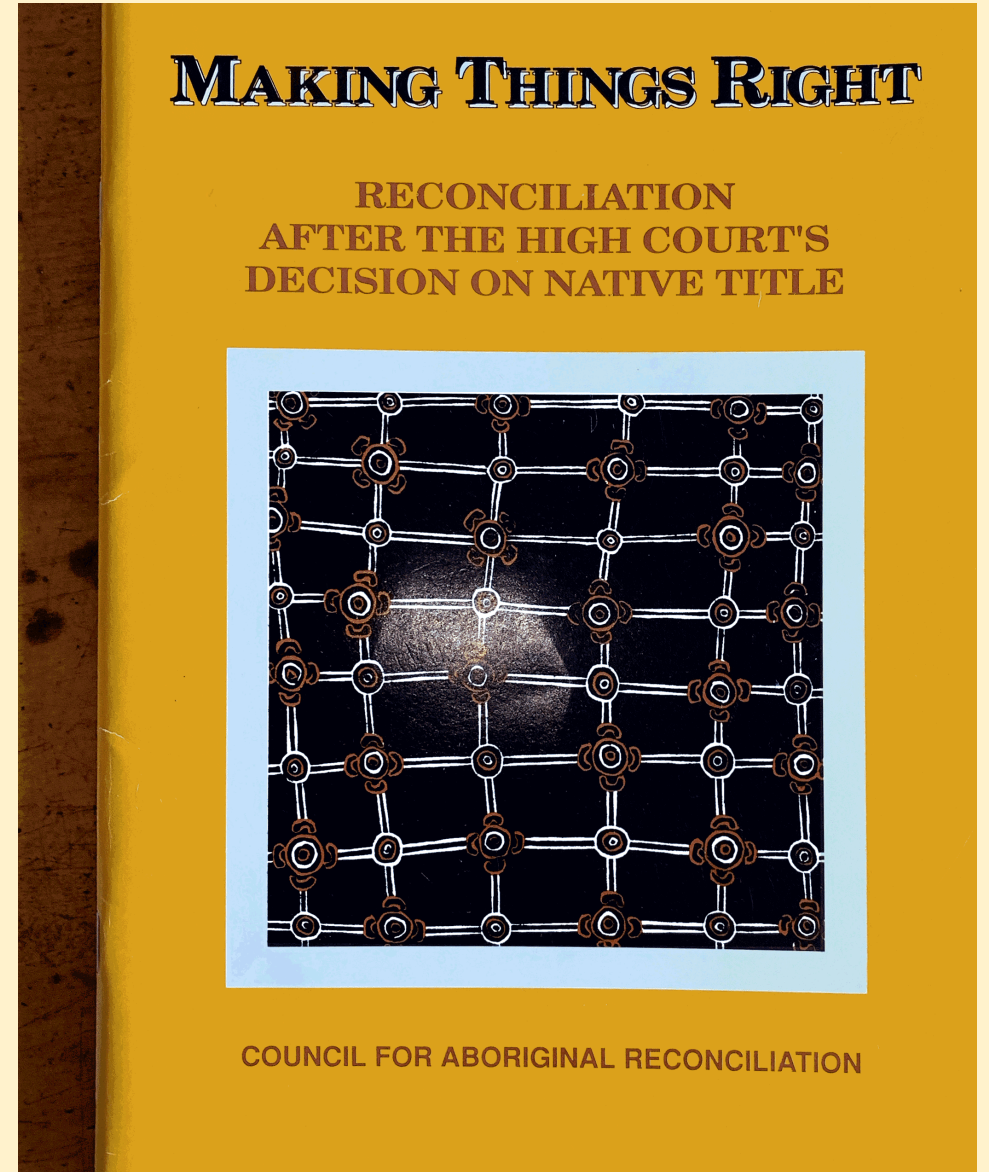
- Lessons in the history of Agreement Making
- Have Native Title Agreements enabled collaboration?
- Is Agreement Making working to leverage critical impact?
- How to improve the outcomes of Agreements ?




Making Things Right Council for Aboriginal Reconciliation

- **January 1993**

- Six Months after Mabo decision
- 12 Months before Native Title Act
- Resources sector concern
- Fear and Uncertainty
- Conflict not Collaboration
 - “White Guilt Industry”
 - “Backyards Under Threat”



A photograph of a road stretching into the distance towards a bright sunset. The sky is filled with orange and yellow clouds, and the silhouettes of trees line the road.

“Three major tracks to certainty in the future”

1. **“Further Court decisions**
 - to clarify who has native title and its extent
2. **Government Action**
 - To define the meaning and location of native title
3. **Agreements**
 - Aboriginal and Torres Strait Islander peoples and other parties could **negotiate agreement.**”

Council for Aboriginal Reconciliation, 1993

“Ideally....”

- **Resolution** of land use and ownership would be through **agreement after negotiation between informed and equal parties.**
- **Options** for a formal agreement:
 - Local documents
 - National laws or policies
 - Agreements between individuals or groups
 - Agreements **enshrined** in legislation, OR
 - ***The Constitution***

Council for Aboriginal Reconciliation, 1993





A Year of Conflict, Consultation and Negotiation

- Mining Industry
- Pastoralists
- State and Territory Governments
- Government Departments
 - Central Agencies (PMC, AGs, Treasury)
 - Resource portfolios
 - ATSIC
- Labor, Liberal, Nationals, Democrats
- Aboriginal and Torres Strait Islander representatives
 - A Team
 - B Team
 - Others...

Leadership and Negotiation

- 'Mabo establishes a fundamental truth and lays the basis for justice. It will be much easier to work from that basis than has ever been the case in the past'.

Redfern Statement Dec 1992

- 'I doubted whether indigenous leaders would ever psychologically make the change to come into a process, to be part of it, and to take the burden of responsibility which went with it—whether they could ever summon the authority of their own community to negotiate for and on their behalf'.

early 1993

- 'Mr. Speaker, some seem to see the High Court as having just handed Australia a problem. The fact is that the High Court has handed this nation an opportunity.'

Second Reading Speech Dec 1993

- '(Lowitja O'Donoghue) decided that...for the first time in the 204-year history of the settled country, its indigenous people sat in full concert with the government of it all. This is why I am here tonight: to acknowledge that moment of leadership and to celebrate it'

Lowitja O'Donoghue Oration May 2011



June 1993 Mining Committee of the CAR

Australian mining industry and Aboriginal people are seemingly locked in a **public tug of war** where there is little agreement or communication. Each side feels compelled to pull against the other in order not to lose ground. Nobody benefits from such a situation.

National

1. Establish a Joint Council on Aboriginal Land and Mining (J - CALM) to:

- develop and monitor strategies for improving Aboriginal participation in and knowledge about the mining industry;
- develop and monitor strategies for improving industry knowledge and understanding of cultural traditions and relationships to land; and
- provide opportunities for personal contact and cultural exchanges between leaders.

2. Through the Joint Council, develop Codes of Conducts for:

- requirements for the protection and maintenance of Aboriginal heritage sites;
- guidelines for positive community relations;
- mechanisms for exchanging information;
- principles for supporting local economic development enterprises;
- the importance of negotiating land access and use agreements.



Native Title Agreements

Included in objects of the *Native Title Act* 1993

- **1998 Amendments** introduced **Indigenous Land Use Agreements (ILUAs)**
- Some **4,000 agreements** since 1993
 - ✓ “substantial Indigenous employment and enterprise outcomes
 - ✓ “transformation from...acrimonious conflict to mutually beneficial agreement- making
 - ✓ “positive approach by minerals companies fostered respect for Aboriginal culture and history and delivered tangible socio-economic impacts”
 - ✓ thousands of agreements, collectively amounting to a bargain with Indigenous people over the use and access to land

Agreements, Treaties and Negotiated Settlements (ATNS) Database and Website Project



But policy reform is needed...

Power imbalances

Resources and Capacity of NTCs and PBCs

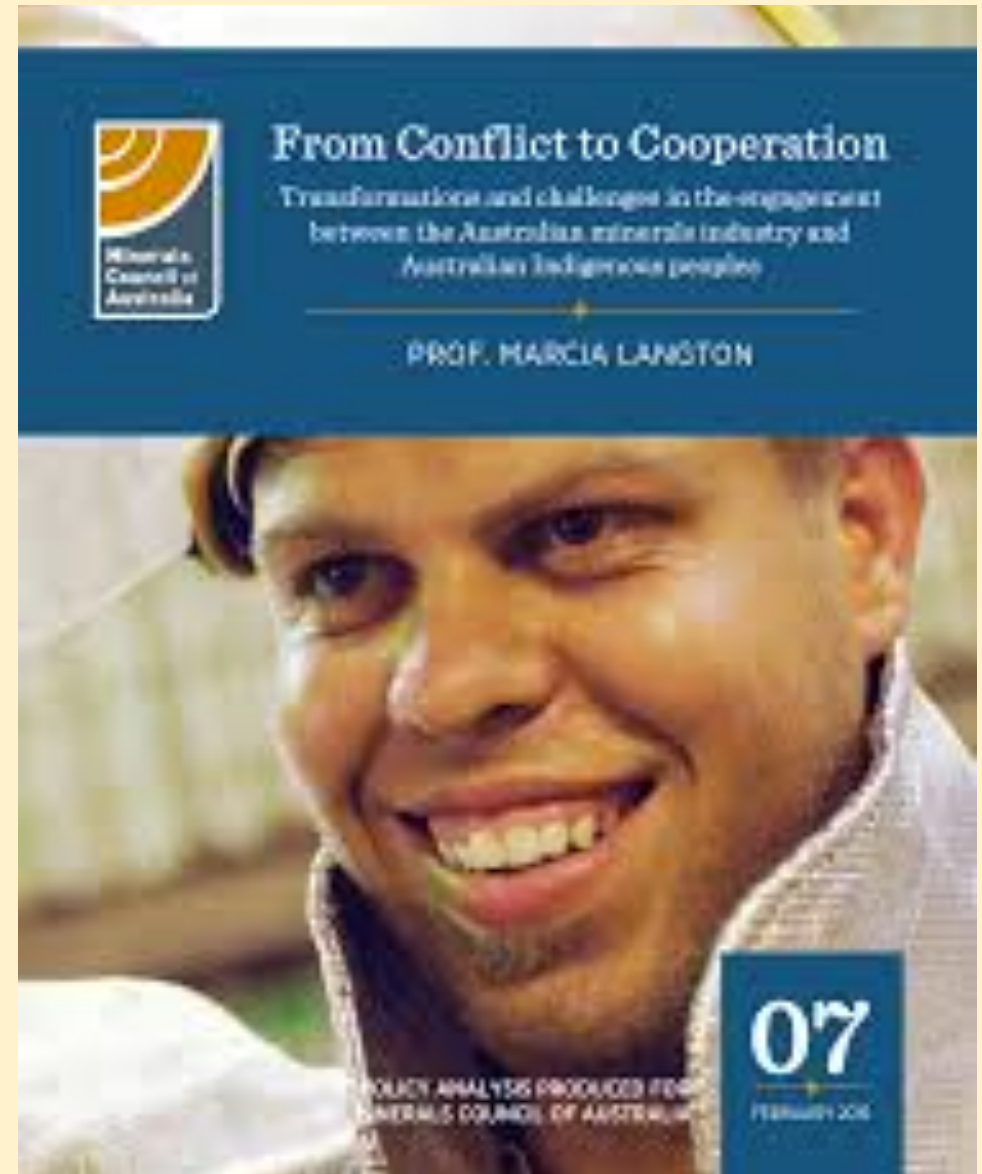
Monitoring Compliance

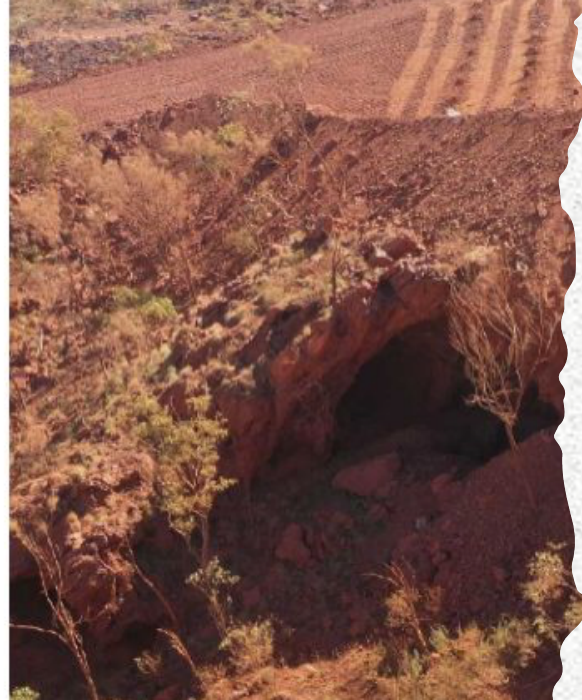
Lack of implementation plans

Transparency of agreements

Short term agreement horizons

Managing internal conflicts and interests





Never Again

Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia - Interim Report

Joint Standing Committee on Northern Australia

- Rio Tinto & PKKP Agreements not between parties of equal power. take-it or leave-it;
- PKKP required to cede rights to:
 - contest company decisions
 - raise concerns
 - Use (CW or State) law to protect heritage sites;
- Early, fixed agreements with Traditional Owners advantaged mining companies, before heritage surveys;
- Free, prior informed consent requires ongoing process of review and engagement with Traditional Owners;
- Role of NNTT as umpire
- **Playing field for agreement-making is never level**

Looking Ahead

Native Title NTRBs:

- Resourced and empowered
- Facilitating negotiations
- Supporting PBCs
- Monitoring outcomes
- Driving Regional Agreements
- Building blocks for the Voice?

Supported by:

- Cultural changes
- Policy changes
- Legislative changes
 - NTA, EPBC, ATSIHPA
- Implementation of UNDRIP

