

**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, Bartholemé, 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

Index

- 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

Index

- 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
- Lardil 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* Wanjinā–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
- Ngalpil 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 Ganalanja 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 Nganyatjarraku, 133, 134
- Skoien, Tony, 88
- Slattery, Brian, 42

Index

- 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
- Toohy, 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
  - Wooten, 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
- Yunkuntjatjara people, 137
- Yunupingu, Galarrrwuy, 79–80