

## The Eddie Koiki Mabo Lecture 2014

# Beyond Mabo: Native title and closing the gap

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### Ms Shannan Dodson

Hello everyone, and thank you to Dean Nola Holloway for that warm welcome and introduction. And thank you to Aunty Gracelyn Smallwood for your generous Welcome to Country. It is important that we pay homage to these traditions in order for us to understand each other and protect our history.

I'd like to respectfully acknowledge the traditional owners the Bindal and the Wulgurukaba people on this land we are meeting on today. I pay my respects to you, those whose ancestors have lived in this land for a near eternity, and to your Elders now and right back through the ages – the people who have kept our cultures alive and strong and vibrant to this day. I acknowledge their continuing connection, their immense knowledge, ingenuity and insight that has shaped this country deeply – and been shaped by it.

It's an honour to have been invited by JCU, Dean Holloway and Vice Chancellor Sandra Harding to speak to you all this evening. So thank you for having me. I'd also like to acknowledge Members of senior management, Staff and students of the University, those beaming in from Cairns, Mackay, Mount Isa, Thursday Island and Singapore and Members of the Community

To follow people such as Lahrissa Behrendt, Mick Gooda, Chris Sarra and others who have also delivered the Mabo Lecture. I pay tribute to all of those legendary figures before me who have delivered this lecture in memory of a great man, I feel very humbled and nervous! I also want to acknowledge the many Elders across the nation whose leadership and achievements have shaped my own life.

I particularly want to honour the Mabo family, Aunty Florence Onus, and Aunty Gracelyn Smallwood, two traditional owners of this region and women who have also devoted their lives to fighting for the rights and opportunities my generation has today. And a special mention to a mentor of mine and leader in this recognition movement Tanya Hosch, who always encourages me to persevere with what is right and just.

So as mentioned my name is Shannan Dodson, and I am a descendant of the Yawuru people from Broome in Western Australia. I was born in Katherine in the Northern Territory, but grew up predominantly in Canberra.

I am the daughter of an Aboriginal father and a white mother, two great contributors to this country of ours. My mother, is a respected anthropologist, mediator and facilitator, who grew up in the small central Queensland town called Dingo. And my father, an eminent academic amongst other things has fought most of his life for the rights of our first nations people.

Both have taught me much of what I know, and both have made me want to make a positive impact.

Thanks to the hardwork and persistence of my ancestors and those who have come before, I have had opportunities that a lot of our mob still do not get to this day. I have had a good education, meaningful work and role models who have inspired me and given me a deep sense of purpose. I am thankful for this, and know that I cannot take that for granted. It is great believers and activists like Eddie Koiki Mabo that have allowed me to live a life that was very different to those who have come before me.

Koiki Mabo is an Australian legend. I hope he will be remembered forever. A Meriam man from Mer Island in the Torres Strait region, he contributed mightily to the legal recognition of a profound truth. A truth of our history that we as Australians are not often told. A truth of our history that is fundamental to our story. The truth that our country did not start in 1788, or 1901. Our country was not barren and bare at the time the First Fleets arrived. There were peoples here for tens of thousands of years, and despite the dispossession, bloodshed, and exclusion, our people are still here, and will always be here.

As other ancient civilisations such as the Romans and the Greeks have fallen across the globe, Aboriginal and Torres Strait Islander peoples have been able to maintain the longest continuing cultures in the world. What we are told is that in 1770 Captain James Cook landed in Botany Bay, home of the Eora people, and claimed possession of the East Coast of Australia for Britain under the doctrine of 'terra nullius' – land belonging to no one. But we all know this to be false. Aboriginal and Torres Strait Islander peoples have extensive and sophisticated knowledge systems, laws, governance and structures that were not acknowledged by the colonisers.

As Dean Holloway mentioned this very university is the place where a groundbreaking and historic achievement was conceived. From 1967 to 1971 JCU was lucky enough to have an influential figure as a groundsman, Eddie Koiki Mabo. Where he joined in university life and would often sit in on seminars or go to the library and read. He was particularly interested in the history, and anthropologists' views, of his people. Mr Mabo was also regularly invited to lecture students studying "Race and Culture" at the university.

He then struck a friendship up with two men that would effectively assist in changing the course of our history. Over lunch one day with historian Henry Reynolds and academic Noel Loos, Eddie Koiki Mabo was confronted by a shocking fact that made no sense to his understanding of connection to country. He was astounded to be told that the Meriam people's traditional ownership of Mer Island was not recognised by Australian law. For over two hundred years courts of this nation had operated on the legal fiction that Australia was terra nullius prior to European arrival.

Professor Reynolds has spoken since of how that moment 'struck the spark' for Mabo's lengthy legal battle for recognition of that which was his all along.

In 1982, Eddie Koiki Mabo and four other Torres Strait Islanders - Celuia Mapo Salee, Sam Passi, Father Dave Passi and James Rice - started legal action against the State of Queensland to establish who owned the island. So concerned was it by the case, that the Bjelke-Petersen Government passed laws to try and cement its own assertions of ownership of the Torres Strait Islands – and a protracted legal battle ensued.

But on June 3, 1992, ten years after the epic legal saga began, the High Court ruled by a six-to-one majority that the Meriam people held native title over Mer or Murray Island.

The judges held that British possession had not eliminated their title and that "the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands". This decision altered the foundation of land law in Australia. It was a profound moment of truth for Australia.

Paul Keating would later reflect on the importance of this recognition in his historic speech at Redfern Park.

“By doing away with the bizarre conceit that this continent had no owners prior to the settlement of Europeans, Mabo establishes a fundamental truth and lays the basis for justice,” he said. “There is nothing to fear or to lose in the recognition of historical truth, or the extension of social justice, or the deepening of Australian social democracy to include indigenous Australians.”

After this landmark case the Federal Parliament in 1993 passed the Native Title Act, which established a legal framework for native title claims throughout the country.

Through the Native Title Act it was recognised that my mob, the Yawuru people have occupied and managed the lands and seas in and around Broome since time immemorial.

In 2006 the Federal Court determined that the Yawuru people are the native title holders of approximately 530,000 hectares of traditional Yawuru country. The Yawuru Agreements were officially registered by the National Native Title Tribunal on 6 August 2010. The signatories to the Agreements are the State of Western Australia, the Shire of Broome and the Yawuru Native Title Holders Aboriginal Corporation.

The Federal Court judgement recognised that “when considered cumulatively, the evidence in relation to those matters demonstrated that the present Yawuru community still acknowledges and observes the traditional laws and customs which, since sovereignty, have constituted the normative system under which the native title rights and interests in issue are being claimed.”

The Yawuru Agreement provides an opportunity for my mob to rightly influence the future development of Broome, and continue to safeguard Yawuru culture, way of life and strengthen our identity. Our connection to country – how we use and occupy the seas and land on Yawuru Country – is fundamental to who we are as a people. Knowledge of our country is essential to how we use, manage and protect our Country.

These agreements have led to extraordinary break throughs in decision making and governance, research and planning and partnership building with agencies and institutions, corporate and organisational development, property development, social housing and home ownership, community engagement and caring for Elders. And it is exciting to share with you, that eight years after the recognition of Yawuru native title, Yawuru native title holders are today celebrating the legal ownership of 276,000 hectares, comprising Roebuck Plains Station, Roebuck Export Depot special lease and freehold title to the OTC Dampier block.

The conditions around the leasing of this land is about protecting sensitive cultural and ecological areas and using parts of the country for conservation, tourism and horticulture.

Yawuru leader and my Uncle Patrick Dodson said this means “we can build a globally recognised management regime of an interconnected marine and terrestrial environment that will incorporate one of the most productive cattle stations in northern Australia, a United

Nations RAMSAR listed wetlands site, an Indigenous Protected Area and a soon to be gazetted jointly managed Yawuru Conservation Estate.” Our Native Title achievements as Yawuru people would not have been possible without the determination of Eddie Koiki Mabo and all those involved. While Native Title is not perfect and there are still many learning curves and issues to work through, it is a legal recognition of what the Mabo decision sought to shine a light on.

And I must acknowledge that I know that as far as Native Title goes, the Yawuru have been fortunate compared to others who may not have the bargaining power of an urban area of a mine to negotiate. I also know that many native title corporations are struggling with little or no funding and unable to realise many if not all of their Native Title rights. This is particularly the case where non-exclusive possession means only a ‘bundle of rights’ over which the interests of others prevail. Nevertheless, in our case native title has delivered significant benefit; and even where native title determinations may not have delivered benefits anywhere near the same extent, they have delivered important recognition of the place of our first peoples.

Reinforcing that we were here first, we have always looked after this country and will continue to do so. So now it’s important that we bring the nation’s highest legal framework, our Constitution, up to date with the historical truth acknowledged at law in the Mabo decision. It is also an opportunity for our founding document to reflect the country we aspire to be, one free from racial discrimination, especially at law. And, it will fall to us as Australians – Indigenous and non- Indigenous - to make this happen.

Significantly, this is not an act that can be undertaken on our behalf by the courts or by the parliament. It is one that we, the Australian people, must drive. And therein lies the power and potential of this moment. For changing our Constitution is a difficult feat, and we must get a majority of Australians to vote ‘Yes’ at a referendum to get this over the line.

I grew up around inspirational leaders and individuals that helped change the course of our nation. Growing up it wasn’t until I was much older I realised that I was often in the company of people I knew as uncles and aunties who had played a part in bringing about some of the biggest moments in Australian history such as the Mabo decision and the successful 1967 referendum.

The soundtrack of my early years was one of big questions and how to guide our nation’s course. I was raised with a keen sense of responsibility to that work.

Aunty Gracelyn and Aunty Florence’s words at the Journey to Recognition event (a relay across the nation to spread the word about Recognise and the impending referendum) in Townsville last Monday really stood out for me. They said that my generation has the rights and opportunities that we have because of the commitment of our ancestors, Elders and leaders. We cannot undervalue that, and sit idly, as there is still much more work to be done. If it is not us, who else will do it?

It is obvious that our history lives on with us and among us. The history of exclusion and discrimination is still here in our own memories, in the memories of the family members we love, and in the views of our fellow Australians. It continues to shape attitudes and play a role in the exclusion of many Aboriginal and Torres Strait Islander people today.

That is why I am working on the campaign for an impending referendum to recognise Aboriginal and Torres Strait Islander peoples as the original custodians of this land we now called Australia and ensuring that racial discrimination is not an element of our law-making

framework. Section 25 of our Constitution allows for State's to ban people from voting on the basis of race. And Section 51 (26) or the 'races power' allows Governments to make laws that can discriminate against people based on their race.

Our nation's birth certificate is one of the only ones in the world that does not recognise it's first peoples, it is completely silent on this history. It is also one of the only ones in the world that actually contains sections that discriminate on the basis of race. How can we expect racism to be eradicated within our communities and our society, when the document that shapes our laws allows for racial discrimination in legislative decision making.

Speaking and spending time with people in communities and on the road through the Journey to Recognition, I've seen and heard from many of our countrymen and women. I have seen the resilience, patience and generosity of our old people. I have seen the discipline, tenacity and strategic leadership of towering figures. I have seen the determination of people who have and still do live through adversity to pursue something better for the generations to come.

I have listened and heard loudly heartfelt aspirations for something better for our country. In Fremantle, Whadjuk Noongar elder Margaret Culbong spoke about the legacy she wanted to leave for the next generations. And we cannot just sit by and leave these aspirations unheard.

For people battling huge challenges every day, there may be times when it is hard to see what the tangible byproducts of recognition might be in the generations ahead. Many may question whether this is enough, and why further aspirations aren't part of the process in a referendum. But nothing in this process precludes work for other aspirations either.

I can understand the frustration felt by those people. This cannot be dismissed. We need to heal the anger and hurt felt by many Aboriginal and Torres Strait Islander peoples over past policies and the course of our history. A lingering sense of mistrust and disappointment is not easily shifted or rectified. And so it's important for non-Indigenous Australians to respect and understand that there may be differences of opinion among Aboriginal and Torres Strait Islander peoples about how to chart our best course forward.

But I believe this is an opportunity that is on the table, which many of our people and our leaders have been fighting for across decades. And although this is not the be end and all, and will not solve many of the practical issues and shocking well-being statistics that we face today we need to take this by the reins and get it right.

We must give our young people the skills and expertise to fix this, and then take this knowledge into the future to continue the work.

Many people wonder what practical effect this will have. Well let's take the Hindmarsh Island Bridge Case. A proposed bridge to Hindmarsh Island attracted much criticism from the local community. The Ngarrindjeri women said they were the custodians of secret "women's business" for which the island had traditionally been used, and which could not be disclosed to Ngarrindjeri men, nor to other men.

The Ngarrindjeri women took the case to the High Court with the claim that it went against previously mentioned Section 51 (26). However as Constitutional lawyer George Williams has pointed out, the Commonwealth argued that there are no limits to the races power, that is, provided that the law affixes a consequence based upon race, it is not for the High Court to examine the positive or negative impact of the law.

Williams who was on the legal team for the Ngarrindjeri women relays how Justices Gummow and Hayne held that the power could be used, as in this case, to withdraw a benefit previously granted to Aboriginal people (and thus to impose a disadvantage). More generally, they pointed out that the use of “race” as a criterion, which s 51(xxvi) not only permits but requires, is inherently discriminatory.

This ended in the Ngarrindjeri women losing their case, and the Bridge was built on sacred area. This was a clear denial of the continuing connection and traditions that our first peoples have to this land.

This is just one reason, and one too many, as to why Section 51 (26) must be altered. While it has served well in enacting legislation such as the Native Title Act, in the case of Hindmarsh Bridge it has also been used to the detriment of the first peoples.

Experts have proposed we remove this ‘up to interpretation’ clause and insert a new section 51A to recognise Aboriginal and Torres Strait Islander peoples (not as a race, but as the First Nations people) and to preserve the Australian Government’s ability to pass laws for the benefit of Aboriginal and Torres Strait Islander peoples. The insertion of international law language such as benefit would hold Parliament’s accountable for ensuring there is proof of beneficial reasoning.

Also recommended by Experts, which I personally believe must be considered, is the insertion of a section banning racial discrimination by Governments. Such a guarantee is a standard feature of other national constitutions. Australia is now the only democratic nation in the world not to have a national framework for human rights protection such as a human rights act or Bill of Rights. The inclusion of a ban on racial discrimination within our highest legal document would protect us from past policies that have severely impacted on the wellbeing and rights of Aboriginal and Torres Strait Islander peoples.

This is about catching Australia up, and bringing our Constitution into the 21<sup>st</sup> century so that future generations can be granted a more mature and equal legal system and nation.

Through the Journey to Recognition I have seen firsthand what this means to people. I have seen Aboriginal and Torres Strait Islander peoples from across the country get opportunities to share their culture and traditions with sections of their community that know little to nothing of this heritage. The pride that this resonates and instills within these individuals is not something you can equate, but the power of this cannot be underestimated.

Knowing who we are and how we fit in is a profound need. Security and confidence in those central questions are important to every human being. So if we think about the kind of future we seek for younger generations of Aboriginal and Torres Strait Islander Australians, imbuing security and confidence about who they are and where they have come from is pivotal. It’s the platform that makes other things possible for them individually and for our nation as a whole. And that is why I am interested in steps that take us closer to that place.

I want to help to exchange the discordant notes of that soundtrack for our next generations - the abuse and negativity – for one of shared pride and connection between Australians, kindling a greater sense of our jointly-held interests than we have achieved so far.

And I want for those generations what I want for my own - the ability to feel respected in our place as first peoples as well as our identity as Australians more broadly – and able to pursue the full opportunities that every Australian citizen should have.

The discrimination that has been felt in this country continues to play out in the separation between us. This is something my generation can help to repair. My own grandfather, an Anglo man, was imprisoned for the crime of loving my Aboriginal grandmother. That speaks volumes. We have a history that even now reaches into our present. This discrimination on the basis of race is not a relic of the colonial past.

But I stand here before you and tell you I am proud of my Anglo background and the great contribution my grandmother, grandfather, aunts, uncles and cousins have made to this country. I am proud of my mother, an inspirational woman who has given me the courage and support to be whoever or whatever I want to be.

And I am proud of my Aboriginal Yawuru background. I am proud of my father, and my uncle and my ancestors for all the hard work they have put in to working towards a future where coming generations can feel proud and confident and respected in their position as first nations people while also seeking out the full opportunities that every Australian citizen should have.

I am proud of my great grandfather, Paddy Djiagween who on meeting Queen Elizabeth the Second during her visit to Australia in the 60s asked for the same rights as everyone else in Australia. I am proud of my big niece for teaching the Yawuru language in Broome, to keep our culture alive and strong. I am proud of my family and my mob for being rightfully recognised as the native titleholders of traditional Yawuru country. And I am proud of the tens of thousands of years of knowledge, connection and history that my mob, my family, and my ancestors have to this country.

This is part of who I am. It's what makes me, me. And, it is what makes us all Australian. While we learn about our colonial history and where it has brought us to today, we can also be rightly proud of our Aboriginal and Torres Strait Islander history. Just as I see this as two important parts of my identity as a whole and how I relate to this country. It is also part of our national identity. This history and understanding of our country should not be proudly recognised and celebrated by *just* me. But by *everyone*.

As a very wise Aunty Pat Anderson once said, we want to live in an Australia which recognises and values the diversity of Aboriginal and Torres Strait Islander ways of life.

It is simple. With the history of exclusion in this country, we must act now.

We must create an environment for my generation and for future generations where our Constitution reflects a truth that we as Australians already hold to be self-evident: that Aboriginal and Torres Strait Islander peoples and cultures are vital to our national identity.

It is time as a nation to gain a better understanding and deeper sense of the amazing contribution our first nations people have made to this country's long history. This is not complicated. Aunty Pat put it perfectly. "Although the future can be surprising, it is in our power to shape the world we live in."

We have that unique chance right now. We must take this once in a lifetime opportunity to shape the future for all those to come after us. We have the power to make history and fix that historical exclusion in our founding document and eliminate racial discrimination from it. How can we say no to that opportunity? Because when looking to the future, I want to live in a country that sees our Aboriginal and Torres Strait Islander cultures and history as a point of shared celebration, not negative differentiation.

I want to live in a country where my children and my grandchildren feel comfortable to express and own who they are. I want to live in a country where it is unlawful for our Governments to make policy and legislation decisions that are racially discriminatory. And I want to live in country that genuinely and proactively recognises Aboriginal and Torres Strait Islander peoples as the original carers and custodians of this place we call home.

I have a great privilege and responsibility to continue the work of my ancestors and all of the leaders that came before me and still fight today.

Five weeks ago I welcomed my first nephew into the world. And I hope that I can play my part in shaping a future that he can be proud of. Thank you.