

Guide to compiling a connection report for native title claims in the Torres Strait

November 2011

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Aboriginal and Torres Strait Island Land Services

Department of Environment and Resource Management

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1. Introduction

By lodging an application for a determination of native title, a native title claim group commences a legal proceeding. It accepts the onus to present evidence sufficient to establish connection to traditional land and sea country under the native title claim group's system of Island custom.

The Queensland Government prefers to settle determinations of native title in the Federal Court through a process of mediation with the native title claimants and the other parties. It is only when all the parties agree on the recognition of the native title rights and interests that a consent determination is possible.

For the State to participate in mediation of the native title rights and interests, it needs to have evidence and argument that support the native title claim group's application for the recognition of native title rights and interests. The State receives this body of evidence and argument through a connection report.

The purpose of a connection report is to put before the State of Queensland key information that the State will use to decide whether or not it is prepared to proceed towards a consent determination of native title. Where the State is prepared to proceed towards a consent determination of native title the final form of any agreed determination of native title will take account of other relevant factors.

In considering the evidence and argument contained in the connection report, the State is assessing whether or not the case presented by the native title claim group is likely to meet the requirements of the *Native Title Act 1993* (Cth) (NTA) were the matter to proceed to trial. The State's assessment from its review of a connection report will either be that the native title claim group probably does meet the requirements of the NTA or that it does not. A positive assessment may include recognition of all or only some of the native title rights and interests claimed by the native title claim group.

The State, in requesting a connection report, provides the native title claim group an opportunity to demonstrate the fact and nature of their relationship to traditional land and sea country, including the exercise of the native title rights and interests that they seek to have recognised in a consent determination.

The State of Queensland acknowledges that the compilation of a connection report represents a significant investment for the native title claim group and the Torres Strait Regional Authority (TSRA). However, the alternative of proceeding to trial would be significantly more resource intensive.

The purpose of this guide is to assist native title claim groups, their representatives and experts to prepare a connection report.

The State recognises that a native title claim group may demonstrate connection to traditional land and sea country in a variety of ways and that there is no simple formula for understanding relationships to country claimed under the NTA.

The State also recognises the diverse and complex histories that Torres Strait Islanders have experienced since the establishment of British sovereignty. Acknowledging these histories, the guide seeks to establish minimum parameters that are sufficiently open-ended so as not to exclude evidence that may help demonstrate the native title rights and interests claimed.

It is anticipated in most native title claims that a senior consultant anthropologist, engaged by the TSRA, will work with the native title claim group to undertake research into their claim and then prepare their connection report. Recognising the importance of professional anthropological advice in the compilation of an effective connection report, this guide has been produced primarily as a reference tool for consultant anthropologists engaged in the researching and writing of connection reports.

This guide does not offer any substantive discussion about the underlying legal issues that must necessarily inform the writing of a connection report. It is envisaged that input from a variety of professions may enhance the native title claim group's connection report. The author of a connection report may need to consider a number of key legal concepts that have been discussed in High Court decisions, particularly *Yorta Yorta* (2002) and *Ben Ward* (2002).

Native title claim groups should recognise that the State's understanding of native title, and its requirements for demonstrating native title, might differ to those of other parties to a native title claim. Where the native title claim group's goal is a proposed consent determination of native title, it is essential that the requirements of all parties be considered.¹

The Queensland Government is a respondent to all native title claims in Queensland. The Department of Environment and Resource Management (DERM) is the lead agency within the Queensland Government for native title. DERM's responsibilities for Indigenous land interests and Indigenous cultural heritage are managed by the Aboriginal and Torres Strait Islander Land Services (ATSILS). Within ATSILS, Claim Resolution is responsible for the management and negotiation of native title claims. The Connection Unit within Claim Resolution has primary responsibility for considering and analysing connection reports. Officers of the Connection Unit are available for further consultation on the requirements of the State.

Contact details

Aboriginal and Torres Strait Islander Land Services
Floor 11, Mineral House
41 George Street
Brisbane QLD 4000
GPO Box 2454
Brisbane QLD 4001

Phone: (07) 3896 3154

Fax: (07) 3405 6899

Direct contacts

Director, Claim Resolution
Floor 7 Mineral House
41 George Street
Brisbane QLD 4000
GPO Box 2454
Brisbane QLD 4000

Phone: (07) 3224 7895

Fax: (07) 3224 7859

Coordinator, Connection Unit
Floor 7, Mineral House
41 George Street
Brisbane QLD 4000
GPO Box 2454
Brisbane QLD 4001

Phone: (07) 3224 7605

Fax: (07) 3224 7859

2. Suggested format for compiling a connection report

The written report is the most commonly adopted format for a connection report. A written report should include:

- an executive summary
- a description of the research methodology
- the author's curriculum vitae
- a description of the claimed area, including outer boundaries
- the content of the connection report should include:
 - identification of the native title claim group
 - continuity of connection
 - the normative system of Island custom of the native title claim group.

Appendices and any other accompanying materials, such as:

- affidavits
- primary and secondary documents.

Supporting documentation can accompany the report and can be used to great effect, including:

- tape-recorded evidence
- video-recorded evidence
- photographic and other pictorial evidence
- maps and plans.

Evidence contained within any supporting documentation should be cross-referenced to the content of the connection report. A statement concerning content and purpose should accompany any presentation of tape-recorded and video-recorded evidence. This statement can take either oral or written form.

Selection of other format-types for presenting evidence of connection is not limited to the examples listed above. However, consultation with officers in the Connection Unit may well be advisable before embarking on such a course of action.

This guide contains a section providing contact details and a summary of the major repositories for materials of potential use in researching the connection-related aspects of native title claims.

2.1 Torres Strait Islander evidence

The State believes that members of the native title claim group themselves may provide the best evidence of connection to traditional land and sea country. Every opportunity should be used to present such potentially compelling evidence in the connection report.

2.2 Confidentiality

To the extent it is able to do so under the law, the State undertakes to deal with a connection report received in mediation on a 'confidential' and 'without prejudice' basis, unless otherwise agreed.

Other government officers involved in the mediation of the native title claim—State negotiators, claim research officers and Crown Law legal officers—have reason to access the connection report.

The State recognises that culturally sensitive material (e.g. gender-specific information) might be relevant to a native title claim. The State has no desire to intrude unnecessarily into these arenas. Should a native title claim group consider including such culturally sensitive material as evidence to support a connection report, arrangements can be made with Director, Claim Resolution regarding appropriate confidentiality on a case-by-case basis.

2.3 Peer reviews and expert opinion

The Queensland Government reserves the right to send a connection report in whole or in part to an independent peer review, or independent counsel or for expert opinion and/or review.

The TSRA will be advised when the State intends to seek a peer review of a connection report.

2.4 Review process

Connection reports should be submitted to Executive Director, Aboriginal and Torres Strait Islander Land Services within DERM (refer to contact details on page 2). These reports are then registered and reviewed.

A senior anthropologist and/or senior historian from the department's Connection Unit and a legal officer from Crown Law will be responsible for reviewing and analysing a connection report. Competing demands and limited resources may affect the time taken to review a connection report.

The review process does not favour written documentation over Torres Strait Islander oral testimony², although it should be recognised that the documentary records have been, and are, important.

Where the Director, Claim Resolution prior to the State's review of a connection report, considers that particular matters have been insufficiently addressed in the connection report, an opportunity will be provided to the native title claim group to address these matters.

Where DERM, prior to completing its review of a connection report, considers an independent peer review or other expert opinion on the whole or part of a connection report necessary, this may also extend the review period.

In the review of a connection report the State applies the requirements of the NTA as explained by the higher courts. However, the State has some flexibility in how it reviews information addressing these requirements.

The State acknowledges that the review of the connection report is conducted in mediation. Consequently the State accepts the view that a connection report submitted for the purposes of mediation and negotiation, rather than a Federal Court hearing, is necessarily more schematic and less detailed than an expert report submitted in a trial.

The State does not expect proof of continuity through evidence from every generation from sovereignty, but evidence from significant number of sample generations will need to be adduced so that inferences can be drawn to establish a case for the maintenance of continuity.

Following completion of the review of the connection report, a recommendation will be made to the Executive Director, ATSILS. This recommendation will advise whether sufficient evidence has been supplied to support substantive negotiation towards a consent determination of native title either to the extent of the native title rights and interests claimed or to some more limited degree. The Executive Director will advise the native title claim group accordingly.

In accordance with a preference for the recognition of native title through a mediation process rather than a litigated process, the State wishes to establish and maintain a dialogue with native title claim groups, their representatives and experts commissioned to research and write their connection report. Given the significant costs involved in the preparation of connection reports, open and transparent discussions between an author of a connection report and officers of the Connection Unit in the initial stages of preparing a connection report may prove beneficial.

3. Content of a connection report

Drawing upon the NTA and current Australian native title case law, this section outlines the broader principles that should be addressed in a connection report to demonstrate the claim group's native title.

3.1 Identification of the native title claim group

In relation to the identification of the native title claim group, the connection report should provide:

- evidence that identifies the native title claim group as the descendants of the traditional owners prior to the establishment of British sovereignty
- evidence in the form of recorded information (archaeological, anthropological, linguistic and historical) relating to the native title claim group's society
- evidence relating to how the native title claim group defines itself
- evidence from neighbouring groups, if obtainable, relating to the identity of the native title claim group and the extent of its traditional land and sea country
- pertinent genealogical data.

3.2 Continuity of connection

In relation to demonstrating the continuity of connection of the native title claim group, a connection report should provide evidence of:

- the native title claim group's physical, cultural and spiritual connection
- the native title claim group's traditional concepts of land ownership and responsibilities to land and sea country, including relevant decision-making processes
- how the native title claim group's responsibilities are transmitted within and between generations
- how continuity of connection was maintained by the native title claim group, especially during any period of separation from the land
- the continuity and transformation of the original customary land and marine tenure systems³ into the contemporary customary land and marine land tenure systems adhered to by the native title claim group
- how the Island custom has been substantially maintained.

3.3 The normative system of Island custom of the native title claim group

To sustain those native title rights and interests for which recognition is sought in a native title claim, a connection report should outline the following:

- a list of the native title rights and interests claimed
- a schedule of activities demonstrating the Island custom of the native title claim group⁴
- an account of how the rights and interests claimed are derived from, and have their roots in, the pre-sovereignty normative system of native title claim group
- an account of how the Island custom has been adapted since sovereignty and how it has continued into the present.

Where relevant, evidence should be provided of:

- laws governing the use of flora, fauna and other land and marine resources
- how traditional decision making processes are exercised and transmitted through the native title claim group
- ceremonies, rituals, songs, designs, observances, knowledge, stories
- principles of succession and inheritance of land
- preservation of sites and places of significance.

4. Advice about preparing material

This section provides additional comment to assist in preparing a connection report outlined in section 3.

This section is intended to be indicative and not prescriptive of the range of issues that might be considered or addressed.

4.1 Identification of the native title claim group

Evidence that identifies the native title claim group as the descendants of the traditional owners prior to the establishment of British sovereignty

The State recognises that a native title claim group in the Torres Strait will not face, to the same degree as might occur on the mainland, the inherent difficulty in demonstrating connection to land and sea country or Island custom at the establishment of British sovereignty, which, for the Torres Strait is in 1872 or 1879 (see section 6: Establishment of British sovereignty in Queensland).

The State recognises that documentary evidence provided through European records prior to 1872 and 1879 might present little more than commentary on occupation and use by Island communities of areas within the claim area. However, the State also recognises that the finer-grained data relevant to the anthropological inquiry pertaining to Island custom investigated by Alfred Haddon in 1888 and by members of the Cambridge Anthropological Expedition to Torres Straits in 1898–99 drew on the evidence of Torres Strait Islanders who were born prior to the establishment of British sovereignty.

Evidence in the form of recorded information (archaeological, anthropological, linguistic and historical) relating to the native title claim group's society

The anthropological work by Alfred Haddon in 1888 and in 1898–99 is fundamental to any native title claim in the Torres Strait. The State recognises that the Haddon material does not cover all islands in the Torres Strait and accepts that referential inferences relating to other islands in the Torres Strait can be drawn from the data presented in Haddon's 1890 account⁵ and the *Reports of the Cambridge Anthropological Expedition to Torres Straits*.

The connection report should provide an accurate estimation of the outer claim boundaries (where these extend beyond the home island) and, where applicable, their relation to those of neighbouring Island groups. This description should include a discussion of what the native title claim group understands to be their geographical limits of the traditional lands and sea country and where the claimed lands and waters are located in relation to those traditional boundaries.

Evidence relating to how the native title claim group defines itself

This section of the connection report should include a discussion of how the native title claim group defines itself as an identifiable community that shares connection under Island custom with the claimed area.

The State accepts that such a discussion of the native title claim group will be broad. The State is not in any way dictating to Torres Strait Islander communities about who is or who is not a member of the native title claim group. The State accepts that Torres Strait Islander communities have considerable and complex systems for determining, recognising and regulating membership of their community, which may involve events such as conception, birth, and adoption.

This discussion might include:

- who comprises the native title claim group
- how the native title claim group defines itself (e.g. on the basis of cognatic, patrilineal and/or matrilineal descent groups, on the basis of language, through identification with one or more of the core family surnames associated with the native title claim group, etc.)
- the principles of identity that are held in common among community members, e.g. strong identification with and attachment to particular localities within the region, such as birth or conception places, places where individuals grew up, burial places
- identification with a language or related languages associated with that region; the State does not consider it detrimental to a native title claim that members of the native title claim group may not have command of their own language⁶

- whether the native title claim group comprises various sub-groups such as family groups or clans and whether the claimed area is comprised of estates linked to such groups
- present knowledge, if it exists, concerning the existence, either historically or in the contemporary setting, of any subgroups that may have an interest in the native title claim
- pertinent genealogical data.

The State recognises that a genealogy is a demonstration of consanguineal continuity and cannot by itself be taken as proof of physical continuity or presence in a landscape. The genealogies, however, provide an important tool for showing:

- an individual's place within a family or group
- the descent of each family or group from the earliest identified ancestors who are held to be from the claimed area or places within it
- sub-groups of large families, which may be descended from identifiable ancestors some generations below the earliest identifiable ancestor for the whole group
- families associated with particular core surnames, which locate them in the group or the community, and their region of origin.

Sample genealogies, especially if presented in the form of descent charts in standard anthropological format, should include sufficient detail (e.g. dates and places of birth, death and marriage) to give a time-depth to the descent of members of the native title claim group to the earliest identifiable ancestor or ancestors.

The use of samples of detailed life histories from persons within the native title claim group can provide compelling evidence for connection, especially when projected through time and through several generations. Genealogical data can be used effectively to produce social biographies.

It would be helpful if an author of a connection report could indicate, where reference is made to individuals in the body of the connection report, whether such individuals are included in the sample genealogies, and if so, where.

4.2 Continuity of connection

Evidence of the native title claim group's physical, cultural and spiritual connection

The State accepts that Torres Strait Islander communities have maintained a continuity of connection with their home islands. It is recognised that the Queensland Government, especially in the central islands of Torres Strait, supported policies that led to the increasing sedentarism of Torres Strait Islanders on home islands.⁷

Matters that might be addressed here include:

- whether any of the members of the native title claim group presently reside on or occupy all or part of the claimed land? If so, who and in what manner? How regularly? On what basis? Is permission to enter the claim area necessary under Island custom and if so from whom is permission obtained?
- whether members of the native title claim group have grown up on or within traditional country? Have they used the natural resources of the land and sea country together with family and other members of the native title claim group?
- whether there are any tracks, sacred sites, ceremonial sites, camp sites or burial sites, etc. of the native title claim group on or near the claimed land? What is the significance of the sites to the native title claim group? Do these sites have a history of being visited, attended to and cared for by members of the native title claim group?
- the nature of the original community's connection to the claimed land prior to the establishment of British sovereignty in the claim area?
- how the native title claim group and their ancestors have maintained a continuing connection with the claimed land from the time of the establishment of British sovereignty?

The State accepts the comment that 'maintenance of connection is never a function of presence itself, but of what that presence may mean to the relevant people with a certain system of attitudes characteristic of a region'.⁸

Spiritual connection to land and sea country provides important evidence of connection (whether the members of the native title claim group are physically present on the land or not). It has been shown that spiritual connection is recognised as providing the ‘root of their traditional title to land’. As Bruce Rigsby said:

“The traditional relationship to land is dual in character, having spiritual and material dimensions; i.e. they belong to the land and they own it too.”⁹

Rigsby continues:

“The root of their title derives from the creative acts of the ancestral Stories in the Story time and from the unbroken spiritual links which connect them and their Old People with specific land. The claimants also say that it was not just during the Story time that the Stories lived and acted. They say that the Stories still live in and on the land, and the spirits of the Old People, long dead and recently dead alike, also live in and on the land. It is claimants’ spiritual relationship to land which gives rise to their material relationship to it and the rights and responsibilities this entails.”¹⁰

Where possible, an author of a connection report should present evidence for spiritual connection. This might include a discussion of how members of the native title claim group understand their land to be inhabited by various spirit beings and how these spirit beings often play a critical role in the maintenance of Island custom.

Aside from the content of Stories, spiritual connection can be demonstrated by reference to specific sacred and secular sites, ceremonies and rituals, providing that such sites, ceremonies and rituals are preserved and maintained under traditional laws and customs.

The issue of spiritual connection is a sensitive and complex one within Torres Strait Islander communities. The State acknowledges the inquiry into the personal beliefs of individual applicants is inappropriate. Should the native title claim group and/or their representatives consider the presentation of certain data too intrusive, then they may present the details in outline only, with the authorisation of senior community representatives vouching for the data.

Evidence of the native title claim group’s traditional concepts of land ownership and responsibilities to land and waters, including relevant decision-making processes

The connection report should address issues such as:

- how the native title claim group defines and regulates its connection to land and sea country
- how members of the native title claim group succeed to any part of the land in the claim area
- the possibility of neighbouring groups having native title rights within the claim area.

Evidence of how the native title claim group’s responsibilities are transmitted within and between generations

Matters that might be addressed here include:

- how and when is knowledge of Island custom conveyed between generations?
- how and when are the rights, obligations and responsibilities of elders and senior members of the native title claim group transmitted to the younger generations?

Evidence of how continuity of connection was maintained by the native title claim group, especially during any period of separation from the land

The State accepts that European contact impacted on Torres Strait Islanders and their societies and their relationship with their traditional land and sea country. This includes the actions of the Crown¹¹, such as the administration of justice (including police) and the State’s policies relating to Torres Strait Islanders.

The author of a connection report should ensure that adequate data is presented to support the contemporary connection of the native title claim group to the claim area. Consideration should be given to any changes in employment (e.g. the decline of the pearling industry and the movement of Torres Strait Islanders to the mainland to seek employment) that may have affected the capacity of members of the native title claim group to maintain a connection with their country.

An author of a connection report should take notice here of key concepts that have been raised and explained in High Court decisions such as *Yorta Yorta* and *Ben Ward*.

Evidence for the continuity and transformation of the original customary land and marine tenure systems into the contemporary systems adhered to by the native title claim group

It is important for the author of a connection report to address the nature and extent of this change and to demonstrate that the contemporary Torres Strait Island land and marine tenure systems evolved from the earlier model and the reasons for the change.

Evidence for how the Island custom has been substantially maintained

A connection report should present a description of the system of Island custom that was observed by ancestors of the current members of the native title claim group.

An author of a connection report should take notice of key legal concepts relating to law and custom that have been raised in High Court decisions such as *Yorta Yorta* and *Ben Ward*.

Sufficient information should also be provided to illustrate the points raised in *Yorta Yorta* as expressed by Gaudron and Kirby JJ.

“What is necessary for laws and customs to be identified as traditional is that they should have their origins in the past and, to the extent that they differ from past practices, the differences should constitute adaptations, alterations, modifications or extensions made in accordance with the shared values of the customs and practices of the people who acknowledge and observe those laws and customs.”¹²

The State accepts that change, modification, and adaptation are understood as essential components of social development across societies, cultures, and time. Contact forced Torres Strait Islander societies to undergo adaptation and change and that the nature and degree of such adaptation and change will vary for each native title claim group.

Despite greater attention being accorded to the problems of cultural change, it is true to say that there exists no universally accepted definition or understanding of the processes of historically changing ‘traditions’. However, the current state of knowledge pertaining to cultures insists that what must be avoided is the adoption of a static or ‘frozen in time’ approach to the understanding of law, custom and historical change.

It is important that an author of a connection report demonstrate the nature and extent of adaptation and change and then explain how those adaptations and changes derive from the pre-sovereignty system of the native title claim group’s Island custom without any substantial break in continuity.

An author of a connection report should take notice of key concepts that have been raised and explained in recent High Court decisions. An author should take these concepts into consideration in any discussion of adaptations and changes that have evolved following sovereignty, and indicate how they are not so substantial that it is no longer possible to say that those laws and customs are rooted in pre-sovereignty Island custom.

Pertinent information might include consideration of:

- the obligations and responsibilities that fall on the senior members of the native title claim group to maintain Island custom and protect their land and sea country, e.g. passing on knowledge about traditional country; conducting ceremonies, rituals, songs, dancing; protecting sites and areas of significance the extent to which these obligations and responsibilities are presently applied, and the attempts made by senior members of the native title claim group to enforce them
- the extent to which younger members of the native title claim group presently recognise and observe the rights, responsibilities and obligations of the senior members of the native title claim group under Island custom.

4.3 The normative system of Island custom of the native title claim group

To assist the State’s assessment in a negotiated outcome of the native title rights and interests that are sought to be recognised, a connection report should provide a list of the native title rights and interests claimed.

An author of a connection report should consider whether it is necessary to include evidence about any particular right(s) that are sought to be recognised that might not be currently practiced by the native title claim group, for example, succession to a deceased estate. The State accepts that any non-performance of particular rights or interests does not necessarily indicate that such particular rights and interests have lapsed.

Care should be taken to identify whether any other groups (i.e. other than the native title claim group) may be able to exercise rights and interests (core and/or contingent rights) in the claim area. If so, who are those groups and what are the rights that are claimed? This is achieved through a schedule of activities demonstrating the Island custom by the native title claim group.

An author of a connection report should include reference to where the exercise of these activities can be found in the retrospective anthropological and/or historical literatures.

Despite the fact that the NTA does not refer to activities, following *Ben Ward*¹³, a listing of activities may well form a part of a connection report and will assist in providing evidence of the manner in which the relevant rights and interests are enjoyed by a particular Torres Strait Islander community. The State accepts that merely listing activities may not accurately identify rights and interests. For example, the non-performance of an activity does not preclude a native title claim group substantiating that right and interest nor does the performance of an activity necessarily constitute a right and interest as the activity might not be performed under Island custom:

- an account of how the rights and interests claimed are derived from, and have their roots in, the pre-sovereignty normative system of the native title claim group
- an account of how Island custom has been adapted since sovereignty. Where relevant, evidence should be provided of:
 - laws governing the use of flora, fauna and other resources
 - how decision-making processes, based on Island custom, are exercised and transmitted through the native title claim group.

This might include discussion of whether the nature of the current connection of the native title claim group with the claimed land and sea country is one that excludes all or certain members of the native title claim group from being on the land at all times or at certain times. If so, what is the system of rules observed by the native title claim group, which forms the basis for exclusion?

The discussion might usefully address sanctions (whether they are spiritual or otherwise) that can be invoked for addressing any transgressions of Island custom. Components of this system may operate in a customary fashion, i.e. through habitual practice giving them a sense of being socially and culturally normative.

5. Repositories and records relevant to native title research

This section has been included in this guide to provide contact details and to summarise the major repositories that contain materials of potential use for researching the connection-related aspects of a native title claim.

This section is not comprehensive. Advice regarding the inclusion of additional repositories and particular source materials would be welcome.

5.1 Community and Personal Histories, Department of Communities

Community and Personal Histories provide access to Queensland Government records relating to Torres Strait Islanders in Queensland. It was established to facilitate access to the records created by the Department of Aboriginal and Torres Strait Islander Policy and Development Aboriginal, Torres Strait Islander Services, Department of Communities and its predecessor departments over the last hundred years and can provide valuable assistance to applicants and their consultant researchers with primary source information relating to:

- family trees
- family history research
- community history research
- removal and exemption information
- births, marriages and deaths information
- native title research for connection reports and registration test.

Community and Personal Histories provides direct personal service to clients as well as providing assistance in the use of Government records relating to Torres Strait Islanders held at the Queensland State Archives, Brisbane. All services of Community and Personal Histories are free.

Applicants and their consultant researchers should contact Community and Personal Histories as soon as possible as the information held there can assist with the mediation process and compilation of information for the registration test and connection reports.

Brochures outlining the services provided and contacts for other agencies that will help with inquiries, are available from Community and Personal Histories in Brisbane. Copies are held in centres throughout the State including the TSRA.

The Community and Personal Histories team can be contacted the following ways:

Free call: 1800 650 230

Postal address:

PO Box 806
Brisbane QLD 4001

Visit:

Level 6, 75 William Street
Brisbane QLD 4001

Fax: (07) 3239 3464

5.2 Queensland State Archives

The Queensland State Archives is the Government agency charged with the responsibility of collecting records of Queensland Government departments, State courts, local government authorities, statutory authorities, government owned corporations and ministerial records which are considered worthy of permanent preservation for historical or other reasons. It is also concerned with ensuring government agencies create and keep their permanent records, whatever the format, for use by future generations of researchers

Although the Archives do hold some records predating the separation of the Colony of Queensland on 10 December 1859 most of the Queensland State Archives' records were created after that date. The State Records Authority of New South Wales holds most public records referring to areas now in Queensland prior to December 1859.

Records held at the Queensland State Archives are preserved in their original order, together with the finding aids of the creating department or agency.

The general public may view records on open public access in the Public Search Room. A Readers' Ticket is required. This can be obtained on arrival at reception by producing two forms of identification. One form of identification must contain a signature, or must be a record such as a driver's licence with a photograph. An application form for a Reader's Ticket is available on-line through the Archives web site. For convenience this form can be printed and completed prior to arrival at State Archives.

Most records have a 30-year access restriction, although records containing personal information of a sensitive nature may be restricted for longer periods.

A reference archivist is available to assist in the use of the records. There are no charges unless copies of records are required. For those researchers undertaking a long-term research project it is advisable to make an appointment with the Manager, Public Access. Email <info@archives.qld.gov.au> for a preliminary interview.

Queensland State Archives is on the web at <www.archives.qld.gov.au>. This web site provides information about guides produced by Queensland State Archives and particular aspects of the holdings.

Resources relating to Torres Strait Islanders held at the Queensland State Archives are also available on the Internet at <www.archives.qld.gov.au>

An electronic database of the holdings can be accessed from the site's home page or directly at <www.archivessearch.qld.gov.au>

The web site also provides links to other archives that will be of value to the researcher, such as the State Records of New South Wales.

The Queensland State Archives can be contacted via:

Phone: 07 3131 7777

Fax: 07 3131 7764

Email: info@archives.qld.gov.au

435 Compton Road
Runcorn Qld 4113
PO Box 1397
Sunnybank Hills Qld 4109.

The public search room is open from 9:00 am–4:30 pm Monday to Friday throughout the year, excluding public holidays and the Christmas to New Year holiday period.

The search room is open on particular Saturdays each year and dates are available on the web site or by contacting Queensland State Archives.

For those unfamiliar with travel to Runcorn, a location map is shown on the website.

5.3 State Library of Queensland, Brisbane

The State Library of Queensland is the State's major public library, offering a wide range of library services and collections. It is situated in the Queensland Cultural Centre, South Brisbane. Details about travel to the State Library are contained on the State Library's web site.

The State Library provides a wide range of information resources and services across the State. A reference service is provided either by telephone (for quick answers to basic questions) or a written reference service.

The State Library conducts an inter-library lending service for most items in the collection. The State Library is open from Monday to Thursday 10:00 am–8:00 pm, Friday to Sunday 10:00 am–5:00 pm. Closed Christmas Day, Boxing Day, New Year's Day and Good Friday. Open 10am–5pm all other public holidays.

The State Library collections (including the microform collections) are located on:

Levels 2 and 3, State Library of Queensland
Cultural Centre, Stanley Place,
South Bank.

PO Box 3488
South Brisbane Qld 4101

Phone: (07) 3840 7666.

The John Oxley Library is a reference and research collection relating to Queensland. Its collection includes books, periodicals, newspapers, government publications, pamphlets, manuscripts, personal and corporate archives, photographs and original art works which document and illustrate the history and development of Queensland. A copy of publications issued in Queensland is received under legal deposit and is held in the collection of the John Oxley Library. Some of library's resources, such as the papers of the late Mrs Margaret Lawrie, are relevant to native title research in the Torres Strait.

The John Oxley Library provides a written and telephone reference service and offers a copying service for items held in the collections. The materials held in the John Oxley Library are not available for loan through the inter-library lending service.

The John Oxley Library is open daily 10:00 am–5:00 pm and is situated on:

Level 4, State Library of Queensland
Cultural Centre, Stanley Place,
South Brisbane.

Phone: (07) 3840 7880
Fax: (07) 3842 9126.

The Public and Indigenous Libraries Services program provides comprehensive services to public libraries throughout Queensland. The service's Brisbane office is situated at:

996 Wynnum Rd
Cannon Hill Qld 4170

Phone: (07) 3842 9007
Fax: (07) 3842 9033.

The service's Cairns office is situated at:

201-205 Bunda Street
Cairns Qld 4870

Phone: (07) 4031 3232
Fax: (07) 4031 1234.

Details of travel to the State Library of Queensland are contained on the Library's web site.

Further information about the State Library's collections and services, and access to the Library's online public access catalogue, can be obtained through the State Library's web site <www.slq.qld.gov.au>.

The web page provides links to other Library collections including:

- National Library of Australia, Canberra
- AIATSIS Library and Audiovisual Archives
- State Library of New South Wales (including the Mitchell Library), Sydney
- State Library of Victoria (including the LaTrobe Library), Melbourne
- University of Queensland (including the Fryer Library), Brisbane
- James Cook University of North Queensland (including the North Queensland Collection), Townsville
- University of Central Queensland (including the Central Queensland Collection), Rockhampton
- Historical Society of Cairns.

5.4 Queensland Museum, Brisbane

The Queensland Museum's Torres Strait Islander archaeological, ethnographic and photographic collections can provide an important resource for native title research.

Community members and researchers should contact the following Cultures and Histories Program staff for assistance.

Research library

The Queensland Museum's Research Library dates from 1877 and holds a large collection of over 31 000 books and 5000 serial titles. Resources for native title researchers include significant older journal runs in English (for example *Journal of the Royal Anthropological Institute of Great Britain and Ireland*) and other languages (e.g. *Tijdschrift voor Nederlandsch Indië*).

External researchers are welcome to visit by appointment.

For more information about the Library and access to the main catalogue, refer to <www.qm.qld.gov.au>.

Library inquiries:

Phone: (07) 3840 7688

Facsimile: (07) 3846 1226

Email: qmlib@qm.qld.gov.au.

5.5 Registry of Births, Deaths and Marriages, Brisbane

Civil registration began in 1856 in the Colony of New South Wales (which at that time included the area which is the present State of Queensland). The Registry of Births, Deaths and Marriages has issued certificates of birth, death and marriage since that time. The records of the Registry provide valuable information relating to Torres Strait Islanders.

The registry office is part of the Department of Justice and Attorney General. Information pertaining to services, forms and costs can be found on its website <www.justice.qld.gov.au>.

Certificates of registration held by the registry can be obtained through written application and payment of prescribed fees. These applications can also be lodged at the Registry in Brisbane or at any Magistrates Courts Office or Queensland Government Agency Program (QGAP) offices throughout Queensland.

The registry holds entries of registration of births, deaths and marriages from all areas of Queensland from 1 January 1890 to the present, Marine Births and Deaths relating to people who were born, or died, on voyages to Queensland from 1 January 1890, and deaths of service personnel who enlisted in Queensland and were killed in action during the First and Second World Wars. Records prior to 1 January 1890 are held at the Queensland State Archives and applications for certificates from registrations created from 1856 to 1889 need to be sent to that agency.

Only registry staff is allowed access to the official records. However, the registry will undertake, for the prescribed fee, to search the indexes or registers to locate a particular registration of birth, death or marriage. To keep the cost of search fees to a minimum, as much information as possible should be provided, including possible variations in the spelling of names.

Indexes to births, marriages and deaths have been reproduced on CD, which can assist in locating information about individuals. Copies are available at major public libraries and family history societies throughout Queensland. A useful electronic search facility is to be found on the web site that allows access to: births registered in Queensland up to and including 1914; deaths registered in Queensland up to and including 1964; and marriages registered in Queensland up to and including 1934.

The Registry office is located at:

110 George Street
Brisbane Qld 4000
PO Box 15188
City East Qld 4000

Phone: 1300 366 430

Email: bdm-mail@justice.qld.gov.au

5.6 Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra

Services offered to native title researchers at the Australian Institute of Aboriginal and Torres Strait Islander Studies

When work is commenced on a native title claim, please consider contacting the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) for valuable material that will be most pertinent to research.

The AIATSIS Library and the Audiovisual Archives contain some of the most comprehensive collections of material in Australia about and by Australian Indigenous people. Approximately 20 per cent of the Library holdings and approximately 25 per cent or more of the collections of audio, video and pictorial material in the Audiovisual Archives have content related to Queensland. Many of these items are held uniquely at AIATSIS.

Most of the information on this material is accessible through Mura, the on-line catalogue. A unique feature of the catalogue that will be of special help to native title researchers is that all entries can be accessed by language group and geographical area. A thesaurus of language names helps to ensure that alternate spellings are recognised.

In-house service to native title clients

The Native Title Research and Access Officer works solely with native title clients, offering a range of services to help them find what they need at the Institute. Requests may be made both by Institute visitors and remote clients.

Clients may do their own searches either remotely or at AIATSIS. Alternatively, a list of search terms can be sent to the Native Title Research and Access Officer, who can prepare a listing of all relevant material. Please provide information on the geographical spread of the claim, names of claimants and related family groups, language groups, and any historical detail about removals or missions or reserves so that the Officer may be able to give you what you need. The service is free of charge for up to 200 citations.

Please visit the AIATSIS web site <www.aiatsis.gov.au> for other charges.

At present, some material from the Audiovisual Archive is not yet listed on the Web catalogue; however the Native Title Research and Access Officer has access to all listings and can make a comprehensive search. The completed searches can be posted or sent via email.

Some of the material may be restricted by the depositor for a variety of reasons, such as cultural sensitivity or pending publication, and such restrictions, where they exist, are shown for each catalogue entry. Clients have the responsibility to contact depositors and to arrange permissions to view, to listen to or to copy any restricted material. The Native Title Research and Access Officer can assist the client by interpreting the nature of the restriction, by supplying addresses and other contact details where clearances are necessary and by providing clearance forms.

Print collections

Once relevant material has been identified, it may be accessed at the Institute free of charge or copies may be made for a fee. Self service photocopying can be done for 20 cents per page, or photocopy requests by the Institute for \$9.90 per item (up to 50 pages). Copies must be made in accordance with the *Copyright Act 1968* and within the conditions of access as set by the depositors. A large proportion of the Library's holdings are in the form of published material available in the open stacks; however there is a considerable collection of original manuscripts, rare books, personal papers, microfilm, rare serials and language materials held in a special room away from clients. The Native Title Research and Access Officer can assist clients in gaining access to this material; however it is best to request such information in advance by email or by phone before visiting the Institute.

Audiovisual collections

Native title researchers can find much valuable documentation for their claims within the audiovisual archives. Recording and images can show important aspects of land ownership and management. Listings of much of this material are available on Mura, the web-based catalogue; contact the Native Title Research and Access Officer for complete searches. Visitors and remote clients can order copies of photographic, recorded sound and video/film material; the amount requested will need to be negotiated depending upon staffing and time constraints. Contact the Native Title Research and Access Officer for requests relating to native title claims. Please see the AIATSIS web site for charges. Researchers visiting the Institute should make an appointment to view or to listen to the material in-house.

Other AIATSIS activities involving native title

The Native Title Research Unit identifies pressing research needs arising from the recognition of native title, conducts relevant research projects to address these needs, and disseminates the results. In particular, it publishes a regular newsletter, an Issues Papers series, and publications arising from research projects. The Native Title Research Unit organises and participates in conferences, seminars and workshops on native title and social justice matters. It aims to maintain research links with others working in the field. The newsletter, which is available online, also contains occasional listings of newly-catalogued material in the AIATSIS Library of specific interest to native title researchers. See the AIATSIS web site for further information on the Unit and its work.

The Family History Unit gives research support to Indigenous clients who are in the process of tracing their own family histories. Although native title clients work with the Native Title Research and Access Officer, sometimes it is helpful for them to seek guidance from the Family History Unit, which is located next to the Library.

5.7 Church archives

The involvement of the churches with Torres Strait Islanders dates from the early years of the Colony of Queensland. The first formal church mission in the Torres Strait was established by the London Missionary Society in 1871. The church records can complement the official records held at the Queensland State Archives. The church records are held in archives of the respective denominations located in Queensland, interstate or overseas.

Several of the major denominations such as the Uniting Church of Australia have a complex administrative history. The contemporary churches trace their present Australia-wide structure to a number of different ecclesiastical bodies that were established in the different Australian colonies prior to Federation in 1901. The records of these earlier ecclesiastical organisations are generally held in church archives or other major repositories such as the Mitchell Library, Sydney or the National Library of Australia, Canberra.

Conditions relating to access to church records should be noted as not all materials are open access.

A useful directory to government and non-government archives can be found at <www.archivists.org.au>.

Anglican Church of Australia

The first Anglican contact with Torres Strait Islanders occurred when two Anglican missionaries, Rev F C Jagg (from the London-based Society for the Propagation of the Gospel (SPG)) and W T Kennett, were sent to the northern settlement of Somerset. Their reports on the Aboriginal people of northern Cape York and the Kaurareg people of the southern Torres Strait have been edited and reproduced in David R Moore, *Islanders and Aborigines at Cape York: an ethnographic reconstruction based on the 1848–1850 'Rattlesnake' journals of O W Brierly and information he obtained from Barbara Thompson* (Canberra: Australian Institute of Aboriginal Studies; New Jersey: Humanities Press, 1979).

The original correspondence is held in the United Society for the Propagation of the Gospel in London. Further information can be obtained on the Society's web site <www.uspg.org.uk>.

The Jagg and Kennett correspondence forms a useful complement to the official correspondence at Queensland State Archives and in the Colonial Office records at the Public Record Office, London <www.pro.gov.uk>.

The records of the Anglican Church of Australia are held in the archives of the current Anglican dioceses. A network of Anglican Archives has been established with contact details for researchers. This can be found at <www.anglican.org.au>.

The areas now in Queensland formed part of the Diocese of Newcastle. Information on the Newcastle archives can be found at <www.newcastleanglican.org.au>.

The Diocese of Brisbane was established in 1860; the northern boundary of the diocese was located just north of Mackay (at the 21st parallel of south latitude). The records are held in the Diocesan archives at Webber House in Brisbane. Information concerning these records can be found at <www.anglicanarchives.org.au>.

The area to the north of the 21st parallel, deemed to be part of the Parish of Ryde in the Diocese of Sydney, was erected into the Diocese of North Queensland in 1876. The records of this Diocese are held in Townsville. Inquiries should be made to the Diocesan Registry <www.anglicannq.org>.

The Diocese of Rockhampton was formed from the northern areas of the Diocese of Brisbane in 1892. The records of the Diocese can be consulted at the Diocesan archives <www.archivists.org.au>.

The Diocese of Carpentaria was established in 1900 from the northern areas of the Diocese of North Queensland. The Diocese of Carpentaria was re-incorporated into the Diocese of North Queensland in 1996. Information about records of the former Diocese of Carpentaria can be found at <www.anglicanarchives.org.au>.

The Anglican Church took over responsibility for the Torres Strait missions from the London Missionary Society in 1915.

Original responsibility for the Anglican missions in Torres Strait was assumed by the Australian Board of Missions and then it passed to the Diocese of Carpentaria. The records of the Australian Board of Missions are located in the Mitchell Library, Sydney.

Catholic Church in Queensland

The Catholic Diocese of Brisbane was established in 1859. The records of the Diocese of Brisbane are located in the Archdiocesan offices in Brisbane.

The Diocese of Rockhampton was established in 1882. Information concerning the records of the Diocese and the Diocesan archives can be found at <www.rok.catholic.net.au>.

The Diocese of Toowoomba was established in 1929. Information on the Diocesan archives can be found at: <www.archivists.org.au>.

The Diocese of Townsville was established in 1930. Information on the Diocesan archives can be found at <www.archivists.org.au>.

The Diocese of Cairns was erected in 1941 from the Vicariate-Apostolic originally established in Cooktown in 1877. Information on the Diocesan archives can be found at <www.cairns.catholic.org.au>.

Some of the religious congregations with foundations in the various Catholic diocese maintain their own archives. For example, the Sisters of St Joseph <www.archivists.org.au>. The Christian Brothers website <www.archivists.org.au>.

A Catholic presence was established on Thursday Island by the French order—the Société des missionnaires du Sacré-Cœur. Priests and religious of the order assumed responsibility for the mission established on Hammond Island (Keriri) in 1922. Some of the records relating to mission will be found at the Queensland State Archives and in the Diocesan Archives in Cairns. The records of the order are located at Issoudun (France) and information can be found at <<http://issoudun.cef.fr>>.

A useful guide is available at <www.misacor.org>.

Records relating to the Society's Micronesian, Melanesian and Papua-New Guinea missions have been reproduced on seven (7) reels of microfilm by the Pacific Manuscripts Bureau (reels 4597–4600). Copies of these films are held by the National Library of Australia, the University of Sydney, University of Newcastle and the State Library of Victoria.

The Uniting Church of Australia

The Uniting Church of Australia was formed on 22 June 1977 as a union of three churches: the Congregational Union of Australia, the Methodist Church of Australasia and the Presbyterian Church of Australia. The Uniting Church established a National Historical Committee and Archives in Sydney. Information relating to this repository can be found at <<http://nat.uca.org.au>>.

The Uniting Church archives holds some, but not all, of the records of the three churches that entered the union in 1977.

Presbyterian Church of Australia

The Presbyterian Church of Australia was formed as a national body in 1901 when the Presbyterian churches in each of the States united together as the Presbyterian Church of Australia. Not all the congregations of the Presbyterian Church of Australia entered the Uniting Church; these continued as the Presbyterian Church of Australia. The first Presbyterian presence in Queensland dates from 1838.

In 1863 representatives of the several Presbyterian congregations in Queensland agreed to enter into a union under the name of the Presbyterian Church of Queensland. A Federal Assembly was established in 1886 and this became a formal union of the several state churches in 1901.

Useful references for the history of the Presbyterian Church of Queensland and the Presbyterian Church of New South Wales can be found in:

Richard Bardon, *The centenary history of the Presbyterian Church of Queensland, 1849–1949* (Brisbane: Smith and Paterson, 1949)

James Cameron, *Centenary history of the Presbyterian Church in New South Wales*. 2 vols (Sydney: Angus and Robertson, 1905)

R Gordon Balfour, *Presbyterianism in the colonies: with special reference to the principles and influence of the Free Church of Scotland* (Edinburgh: MacNiven and Wallace, 1899).

Information concerning the records of the Presbyterian Church of Australia held by the Uniting Church of Australia can be found at <<http://nat.uca.org.au>>.

For the purposes of native title research, the records of the several Presbyterian missions are of some importance. The Presbyterian Church assumed responsibility for the management of several Aboriginal missions in north Queensland, but not in the Torres Strait. The most comprehensive guide to the Presbyterian mission records is to be found in:

Geoffrey S Wharton, *Mission time: a guide to Queensland Presbyterian Church records relating to the Gulf Missions at Aurukun, Mapoon, Mornington Island, Weipa and the Thursday Island Mission Agency 1891–1978* (Brisbane: PCE Press, 2000)

Methodist Church of Australasia

The Methodist Church has a complex history. The Methodist Church of Australasia was the result of the amalgamation of several earlier Methodist ecclesiastical bodies

The Bible Christians entered into union with the Wesleyan Methodist Church in 1879. The Primitive Methodists and two of the three United Free Methodist congregations entered into a union in 1898. In January 1906 the united church became known as the Methodist Church of Australasia. Queensland Methodism was under the direction of the New South Wales Conference until 1893 when a separate Queensland Conference was established.

An outline of the history of Methodism in New South Wales and Queensland can be found in:

James Colwell, *The illustrated history of Methodism: Australia 1812 to 1855, New South Wales and Polynesia, 1856 to 1902*. 2 vols (Sydney: Brooks, 1904)

R S C Dingle (ed), *Annals of achievement: a review of Queensland Methodism 1847–1947* (Brisbane: Queensland Book Depot, 1947)

Queensland Methodist Home Mission Society, *Jubilee souvenir, 1864–1914* (Brisbane: Queensland Methodist Home Mission Society, 1914).

The records of the Methodist Church of Queensland (and its predecessor bodies) are held with the Uniting Church records in Queensland. Some records are also held at the National Library of Australia, Canberra. A collection of the minutes of the Overseas Mission of the Methodist Church of Australasia, 1855–1939 are held in the Mandeville Special Collections Library, Geisel Library, University of California at San Diego. A reference to this collection can be found at <<http://www.oac.cdlib.org>>.

The Uniting Church's Historical Committee and Archives hold the few extant records of the Primitive Methodist Church in Queensland. The State Library of Queensland holds a microfilm copy of an imperfect run of the Queensland Primitive Methodist from July 1876 to July 1888.

Congregational Union

Congregational or Independent churches were established in areas now in Queensland from the 1850s. The Queensland Congregational Union was formed in October 1861. The records of the Queensland Congregational Union are held with the records of the Uniting Church. A brief history of the Congregational Church in New South Wales and Queensland can be found in:

Independent Congregationalism: will it promote, or will it destroy true religion (Brisbane: Southern World, 1887)

G Lindsay Lockley, *The foundation, development and influence of Congregationalism in Australia with emphasis on the nineteenth century* (PhD thesis, University of Queensland, 1966)

Arthur C Nelson (ed and comp), *History of the effective establishment of Congregationalism in the Australian colonies and New Zealand* (Hobart: Walch, 1930).

The records of the London Missionary Society (LMS) are of particular importance for research in the Torres Strait. The LMS mission began in 1871 and continued until responsibility for the Torres Strait mission was surrendered to the Anglican Church so as the LMS could concentrate on its New Guinea mission. The records of the LMS are held in the Library of the School of Oriental and African Studies, University of London. A project to fully catalogue the LMS archive is underway at the Library <www.soas.ac.uk>.

A useful overview of the LMS archives can be found at the website for the Congregational Council for World Mission (the Council was formed from a merger of the London Missionary Society and the Commonwealth Missionary Society in 1966) <www.cwmission.org.uk>.

The LMS Home Office records and those of the overseas missions in the Pacific and Australia have been microfilmed as part of the Australian Joint Copying Project. The collection comprises 181 reels of microfilm. A description of the records microfilmed can be found in:

Australian Joint Copying Project handbook. *Part 8: Miscellaneous (M Series)*, 2nd edn (Canberra: National Library of Australia and the State Library of New South Wales, 1984), Entry 99 (p. 51).

The records of the Australian and New Zealand Committee of the London Missionary Society are held in the National Library of Australia, Canberra.

6. Establishment of British sovereignty in Queensland

Date	Areas
1788	Eastern Australia between 10° 37'S to 43° 39'S with a western boundary set at 135 th degree of east longitude; the eastern limit was not specified, but included all the islands adjacent in the Pacific Ocean with the latitudes described.
1788–1855	Wellesley Islands
1872	All islands lying and being within 60 miles off the coasts of Queensland
1879	Islands in the Torres Strait located outside the 60 mile limit

British sovereignty was proclaimed over eastern Australia (including the present State of Queensland) on 26 January 1788. The territorial limits of the original Colony of New South Wales were defined in each of the two commissions issued to Governor Arthur Phillip in 1786 and 1787:

Our territory called New South Wales extending from the northern cape of extremity of the coast called Cape York in the latitude of 10° 37' south to the southern extremity of the said territory of New South Wales or South Cape in the latitude of 43° 39' south and...all the country inland westward as far as the 135th degree of east longitude...including all the islands adjacent in the Pacific Ocean within the latitudes aforesaid.¹⁴

The territorial limits of New South Wales—and, consequently, the extent of British sovereignty in Australia—were extended westward from the 135th to the 129th meridian of east longitude in 1825.¹⁵ The territory of New South Wales was progressively partitioned to form the separate colonies of Van Diemen's Land (1825), South Australia (1836), Victoria (1851) and Queensland (1859).¹⁶

The Colony of Queensland was established by Letters-Patent on 6 June 1859.¹⁷ The territorial extent of Queensland at separation from New South Wales in 1859 was defined as:

“...so much of New South Wales as lies northward of a line commencing on the sea-coast at Point Danger in latitude about 28° 8' south and following the range thence which divides the waters of the Tweed, Clarence, and Richmond Rivers from those of the Logan and Brisbane Rivers westerly to the great dividing range between the waters falling to the east coast and those of the River Murray, following the great dividing range southerly to the range dividing the waters of Tenterfield Creek from those of the main head of the Dumaresq River, following that range westerly to the Dumaresq River and following that river...downward to the confluence with the Macintyre River... downward to the 29th parallel of south latitude, and following that parallel westerly to the 141st meridian of east longitude, which is the eastern boundary of South Australia, together with all and every the adjacent island, their members and appurtenances in the Pacific Ocean.”¹⁸

The western boundary of Queensland was extended from the 141st meridian of longitude to 138th parallel of longitude by Letters-Patent of 13 March 1862.¹⁹ Neither the establishment of the Colony of Queensland (1859) nor the extension of its western boundary (1862) affected the date of British sovereignty, as ‘the boundaries of Queensland are determined,... , by reference to the boundaries of New South Wales’.²⁰

Off-shore islands

While the determination of Queensland's land boundaries presents little difficulty, the question of ownership and sovereignty over the islands lying adjacent to the Queensland coast (at distances from 15 to 160 miles) remained in doubt until the Queensland maritime boundaries were extended in 1872 and 1879.²¹

From 1788 the territorial descriptions of the Colony of New South Wales described in the Governors' commissions included the ‘adjacent islands’. The Colonial Office considered the description of the territorial extent of the Colony, as recited in the commission of Sir William Denison of 8 September 1855, following the granting of responsible government to New South Wales, as:

“Comprising all that portion of Her Majesty's territory of Australia lying between the one hundred and twenty-ninth degrees of east longitude and hundred and fifty-fourth degrees of east longitude²² and northward of the fortieth degree of south latitude, including all the islands adjacent to the Pacific Ocean within the longitude and latitude aforesaid, and also including Lord Howe Island, being in or about the latitude of thirty-one degrees thirty minutes south and one hundred and fifty-ninth degree of east longitude...”²³

The territorial description as at 8 September 1855 is the critical date for determining jurisdiction over islands outside the three-mile limit.²⁴

The Letters-Patent establishing the Colony of Queensland in 1859 did not specify which islands adjacent to the coast passed from New South Wales to Queensland. The Imperial authorities, however, regarded the limits of adjacent islands ‘as very narrow’.²⁵ As R D Lumb notes:

“This absence of a precise maritime boundary in the constituent instrument prompted debate as to whether any distance from the coast criterion (that is, a three mile limit) was implicitly embodied in the description of boundaries in the Letters-Patent.”²⁶

Wellesley Islands

The Letters-Patent of 1862 specifically include ‘all and every the adjacent islands, their members and appurtenances in the Gulf of Carpentaria’, i.e. the Wellesley Islands which lie between fifteen and sixty miles from the coastline.²⁷ Lumb considers that ‘the original boundaries of New South Wales would therefore seem to have comprised some islands outside the three-mile limit’—the limit of the territorial waters prescribed by customary international law.²⁸ He also noted that by 1863 the Imperial Government had defined the extent of the Queensland boundaries to include the islands within the three-mile limit, while islands outside the three mile-limit were included only if they were occupied by British subjects as at 8 September 1855.²⁹

Coastal islands outside the three-mile limit

The Imperial authorities did not consider that islands situated outside the three-mile limit and adjacent to the east coast of Queensland (such as those along the Great Barrier Reef) had passed to the Colony of Queensland under the Letters-Patent of 1859.³⁰

Consequently Letters-Patent were issued to the Governor of New South Wales in 1863 and 1868 to authorise the leasing of islands outside the jurisdiction of any colonial government within the limits of 10° south and the Antarctic Circle, and between 75° and 170° of east longitude.³¹ The Queensland Government objected to the Governor of New South Wales issuing leases over islands so far from the New South Wales boundaries and so close to Queensland and petitioned the Imperial Government to extend the maritime boundary of Queensland to include islands not within the original limits of Queensland and situated within 60 miles of the coast. The Imperial Government acceded to this request and Letters-Patent were issued to the Governor of Queensland on 30 May 1872, providing for ‘all the Islands lying and being within 60 miles of the coasts of the said Colony should be annexed to, and form part of, the said Colony of Queensland...’³²

Lumb considered that in 1872:

“...in relation to islands adjacent to Queensland which had not become part of that colony by a process of annexation or occupation, the British Crown acted on the basis that the absence of foreign claims established that those islands were dependencies of the adjacent colony as a result of discovery and voyages of exploration. They could be brought within the boundaries of that Colony by the formal process of annexation without first taking possession of each island in the name of the Queen.”³³

Islands in the Torres Strait

The islands between Cape York and the New Guinea coast seem never to have been part of New South Wales as the original Commission of Governor Phillip (and his successors) did not extend beyond 10° south (Cape York). After the establishment of Queensland, the jurisdiction to lease some of these islands was assigned to the Governor of New South Wales.³⁴ In 1872, all the islands in the Torres Strait within 60 miles of Cape York became part of the colony of Queensland.³⁵

From 1872 to 1878 a jurisdiction over certain islands in the Torres Strait that lay outside the 60-mile limit was exercised under the Imperial *Kidnapping Acts* (1872, 1875).³⁶ In February 1878, Henry Chester, the Police Magistrate at Thursday Island, was appointed a Judicial Commissioner in and for the Murray and Darnley Islands, Western Pacific Ocean by the Western Pacific High Commission to provide some form of jurisdiction in the Torres Strait Islands beyond the 60-mile limit.³⁷ Notwithstanding the exercise of such jurisdiction, this did not amount to a claim of sovereignty over those islands.

By 1877 the expansion of the pearl-shell and bêche-de-mer industries in the Torres Strait prompted the removal of the administrative centre from Somerset to the more central position on Thursday Island. Government officials at Thursday Island undertook patrols among the Torres Strait Islands situated within and outside the 60-mile limit and as far as the coast of New Guinea.

In 1877 the Imperial Government enquired whether the Queensland Government was prepared to annex the north-western Torres Strait islands. The Queensland Government accepted this offer and Letters-Patent were issued on 11 October 1878. This extended the maritime boundary of Queensland and provided for the annexation of certain islands in Torres Straits as well as islands of the Great Barrier Reef.

That is to say all islands included within a line drawn from Sandy Cape northward to the south-eastern limit of Great Barrier Reefs thence following the line of the Great Barrier Reefs to their north-eastern extremity near the latitude of nine and a half degrees south thence in a north-westerly direction embracing East Anchor and Bramble Cays thence from Bramble Cays in a line west by south (south seventy-nine degrees west) true embracing Warrior Reef Saibai and Tuan (Dauan) Islands thence diverging in a north-westerly direction so as to embrace the group known as the Talbot Islands thence to and embracing the Deliverance Islands and onwards in a west by south direction (true) to the meridian of one hundred and thirty-eight degrees of east longitude.³⁸

In June 1879 the Queensland Legislature passed the *Queensland Coast Islands Act* of 1879 giving effect to the annexation and the islands described in the schedule of this Act became part of the Colony of Queensland on 1 August 1879.³⁹

Lumb was of the opinion that the Queensland Coast Islands Act had the effect of replacing the Letters-Patent of 1872 and so constitutes the instrument the maritime boundaries of Queensland are to be ascertained.⁴⁰

The validity of the annexation of the off-shore islands was confirmed by the Imperial Government with the *Colonial Boundaries Act 1895 (Imp)*.⁴¹

Endnotes

¹ It is noted that the Commonwealth Attorney-General, in his speech ‘Native title: the next 10 years. Moving forward by agreement’ presented at the Native Title Conference Outcomes and Possibilities at Geraldton on 4 September 2002, stated that the Commonwealth’s approach to consent determinations would be based on four principles:

1. Consent determinations should create certainty about the Native Title rights recognised.
2. Those rights should reflect what the common law allows.
3. The determination should comply with the requirements of the Native Title Act.
4. The process by which the determination is made should be transparent.

In the last principle—transparency—the Attorney made the following statement:

“A number of respondents have been critical of processes for the negotiation of native title determinations. Particularly when they perceive the State in question, and the applicants, to be presenting them with a draft determination that is a *fait accompli*. All parties to a consent determination should be given the opportunity to be satisfied that it properly represents the legal position. This includes giving respondent parties, should they want it, the opportunity to understand the relevant connection material. I recognise that there is a legitimate role for the relevant State or Territory to play in making a threshold assessment of that material. And that there may be cultural sensitivities in its release. But if respondents want to understand the significance of the connection material, then enough information should be provided to enable them to do so, wherever possible. Without this level of transparency, parties to consent determinations will inevitably be left with doubts about the process.”

² For a discussion from an anthropologist’s perspective, see Peter Sutton, ‘The relatives strengths of oral and written evidence’ in *Proof and management of native title. Summary of proceedings of a workshop conducted by the Native Titles Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies at University House, Canberra, 31 January–1 February 1994* (Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies, 1994, 20–24). For a statement, from a historian’s perspective, see E H Carr, *What is history?* (Harmondsworth: Penguin, 1981). For a recent appraisal of the merits of oral and written testimony, see the work of Professor of Modern History at Cambridge University, Richard J Evans, *In defence of history* (London: Granta Books, 1997), Chapter: Sources and discourses, pp. 103–28.

³ The term ‘customary land and marine tenure systems’ follows Anthony Wilkin, ‘Land tenure and inheritance’, Chapter 14 in *Reports of the Cambridge Anthropological Expedition to Torres Straits*, vol 5: Sociology, magic and religion of the western Islanders (Cambridge: University Press, 1904), pp. 284–92; R E Johannes and J W MacFarlane, *Traditional fishing in the Torres Strait Islands* (Hobart: CSIRO Division of Fisheries, 1991); Peter Sutton, ‘The robustness of Aboriginal land tenure systems: underlying and proximate customary titles’, *Oceania*, vol 67 no 1 (September 1996), pp. 7–29; Bruce Rigsby, ‘A survey of property theory and tenure types’ in Nicolas Peterson and Bruce Rigsby (eds), *Customary marine tenure in Australia*, Oceania monographs, no 48 (Sydney: Oceania Publications, 1998), pp. 22–46; and Michael Southon, ‘The sea of Waubin: the Kaurareg and their marine environment’ in Peterson and Rigsby, *Customary marine tenure in Australia*, pp. 219–29.

⁴ The discussion of activities here refers to the High Court’s decision in *Ben Ward* (at 52, 78).

⁵ Alfred Cort Haddon, ‘The ethnography of the western tribe of Torres Strait’, *Journal of the Royal Anthropological Institute of Great Britain and Ireland*, vol 19 no 3 (1890), pp. 297–442. Haddon’s other publications of this period might also assist. A C Haddon, ‘Legends from the Torres Straits’, *Folk-lore*, vol 1 no 1 (1890), pp. (172)–76 and A C Haddon, ‘Manners and customs of the Torres Strait Islanders’, *Nature*, vol 42 (1890), pp. 637–42.

⁶ As discussed, for example, in Alan Rumsey, ‘Language and territoriality in Aboriginal Australia’ in Michael Walsh and Alan Rumsey (eds), *Language and culture in Aboriginal Australia* (Canberra: Aboriginal Studies Press, 1993), pp. 191–206.

⁷ Maureen M Fuary, ‘Torres Strait cultural history’, in Noel Loos and Takeshi Osanai (eds), *Indigenous minorities and education. Australian and Japanese perspectives of their Indigenous peoples, the Ainu, Aboriginal and Torres Strait Islanders*. Report of Joint Research Project, James Cook University of North Queensland and, Hokkaido University of Education (Tokyo: Sanyusha, 1993), pp. 165–86

- ⁸ Peter Sutton, *Aboriginal country groups and the 'community of native title holders'*, National Native Title Tribunal occasional paper series, 01/2001 (Perth: National Native Title Tribunal, 2001), pp. 14–15.
- ⁹ Bruce Rigsby, 'Aboriginal people, spirituality and the traditional ownership of land', *International journal of social economics*, vol 26 (1999). Also Alan Rumsey, 'The Dreaming, human agency and inscriptive practice, Oceania, vol 65 no 2 (December 1994), pp. 116–30.
- ¹⁰ *Aboriginal Land Claims to Mungkan Kandju National Park and Unallocated State Land near Lochinvar Pastoral Holdings. Report of the Land Tribunal established under the Aboriginal Land Act 1991 to the Minister for Natural Resources and Minister for Mines of Queensland* (Brisbane: Aboriginal Land Tribunal, 2001), s. 343 (p. 104).
- ¹¹ 'The Crown' can be taken to be the different levels of Government that have exercised jurisdiction in the areas that now are included in the State of Queensland. These include the Imperial Government, the colonial governments of New South Wales (to 1859) and Queensland, the Queensland State Government, the Commonwealth Government, local government (constituted under New South Wales or Queensland legislation) and statutory bodies.
- ¹² *Members of the Yorta Yorta Aboriginal Community v State of Victoria & Ors* (2002) HCA 58 at para 114.
- ¹³ The discussion of activities here refers to the High Court's decision in *Ben Ward* (at 52, 78).
- ¹⁴ 'Governor Phillip's first commission, 12 October 1786' *Historical records of New South Wales*, vol 1 pt 2: Phillip, 1783–1792 (Sydney: Government Printer, 1892), pp. 24–5; 'Governor Phillip's second commission, 2 April 1787', *Historical records of New South Wales*, vol 1, pt 2, pp. 61–7. For a discussion on the establishment of the boundaries of New South Wales see Alan Atkinson, 'The first plans for governing New South Wales, 1786–1787', *Australian historical studies*, vol 24 no 94 (1990), pp. 22–40; F W S Cumbrae-Stewart, *Australian boundaries*. A paper read before the Australian and New Zealand Society of International Law, at Sydney, on 20th August 1933 (Brisbane: Government Printer, 1934); Bill Gammage, 'Early boundaries of New South Wales', *Historical studies*, vol 19 no 77 (1981), pp. 524–31; and R D Lumb, 'The maritime boundaries of Queensland and New South Wales', *University of Queensland Faculty of Law papers*, vol 1 no 4 (1964).
- ¹⁵ 'Governor Darling's commission, 16 July 1825', *Historical records of Australia*, ser 1, vol 12: June 1825–December 1826 (Melbourne: Library Committee of the Commonwealth Parliament, 1919), pp. 99–107. The western limit of New South Wales situated at the 129th meridian of east longitude would become the eastern boundary of Western Australia in 1829.
- ¹⁶ M H McLelland, 'Colonial and State boundaries in Australia', *Australian law journal*, vol 45 (1971), pp. 671–79. British sovereignty was established over New Zealand in 1839 and the territory was annexed to New South Wales. New Zealand was established as a separate colony in 1841. McLelland, 'Colonial and State boundaries in Australia', p. 673; Lumb, *Maritime boundaries of Queensland and New South Wales*, p. 5. For a more detailed discussion of the annexation of New Zealand see E J Tapp, *Early New Zealand: a dependency of New South Wales, 1788–1841* (Melbourne: Melbourne University Press, 1958).
- ¹⁷ 'Letters-Patent erecting Moreton Bay into a Colony under the name of Queensland and appointing Sir George Bowen as Governor, 6 June 1859', *New South Wales Government gazette*, 1 December 1859, pp. (2639)–42; *Queensland Government gazette* hereafter cited as QGG), 10 December 1859, pp. (1)–3. The Letters-Patent were issued pursuant to the *New South Wales Government Act (Imp)* (18 & 19 Vic c44) (1855), s.7 (Annexure to Secretary of State for the Colonies to the Governor-General, 20 July 1855 published in 'Assent to the new Constitution Act of 1853', *Votes and proceedings of the Legislative Council of New South Wales*, 1855, vol 1, pp. 608–09). See also McLelland, 'Colonial and State boundaries in Australia', pp. 678–79, F W S Cumbrae-Stewart, *The boundaries of Queensland with special reference to the maritime boundary and the "Territorial Waters Jurisdiction Act, 1878"*. A paper read before the *Australasian Association for the Advancement of Science, Section E – History*, at Brisbane, 29th May 1930 (Brisbane: Government Printer, 1930).
- ¹⁸ Letters-Patent , 6 June 1859, QGG, 10 December 1859, p. 2; Cumbrae-Stewart, *Boundaries of Queensland*, pp. 6–7.
- ¹⁹ Letters-Patent extending the western boundary of the Colony of Queensland, 12 March 1862, QGG, 23 June 1862, p. (295)–296; Cumbrae-Stewart, *Boundaries of Queensland*, p. 7–8. The Letters-Patent were issued under the *Australian Colonies Act (Imp)* (24 & 25 Vic c.44), *Supplement to the Queensland Government gazette*, 23 October 1861, pp. 714–15.
- ²⁰ 'The Governor-General's commission and instructions (under the new constitution)', *Votes and proceedings of the Legislative Council of New South Wales*, 1855, vol 1, p. 636, Lumb, *Maritime boundaries*, p. 6.

- ²¹ Cumbrae-Stewart, *Boundaries of Queensland*, p. 8; R D Lumb, 'The Torres Strait islands: some questions relating to their annexation and status', *Federal law review*, vol 19 (1990), p. 156.
- ²² The nearest meridian to the eastern coastline.
- ²³ 'The Governor-General's commission and instructions (under the new constitution)', *Votes and proceedings of the Legislative Council of New South Wales*, 1855, vol 1, p. 636, Lumb, *Maritime boundaries*, p. 6.
- ²⁴ Lumb, Torres Strait islands, pp. 156–57, Cumbrae-Stewart, *Boundaries of Queensland*, p.4.
- ²⁵ Lumb, *Maritime boundaries*, p. 6.
- ²⁶ Lumb, Torres Strait islands, p. 155.
- ²⁷ Letters-Patent , 13 March 1862, QGG, 23 June 1862, p. 296; Lumb, *Maritime boundaries*, p. (1)
- ²⁸ Lumb, *Maritime boundaries*, p. 9. Lumb (Torres Strait islands, p. 157) considers the Imperial Law Officers, advising the Colonial Office in 1863, accepted that the Wellesley Island were included within the boundaries of New South Wales in 1855.
- ²⁹ Lumb, Torres Strait islands, p. 158.
- ³⁰ Lumb, *Maritime boundaries*, p. 7; Lumb, Torres Strait islands, pp. 155–56.
- ³¹ Lumb, *Maritime boundaries*, p. 7; Lumb, Torres Strait islands, pp. 158–59. See also Secretary of State for the Colonies to the Governor of Queensland, 5 June 1872 in Letters Patent appointing the Governor of the Colony of Queensland to be Governor of all islands within sixty miles from the coast of Queensland, and authorising the annexation of the aforesaid islands to that colony (Despatch respecting), *Votes and proceedings of the Legislative Assembly of Queensland*, 1872, p. 537.
- ³² Letters-Patent , 30 May 1872 as an enclosure to Secretary of State for the Colonies to the Governor of Queensland, 5 June 1872 in *Supplement to the Queensland Government gazette*, 17 August 1872, pp. (1269)–71. Lumb, *Maritime boundaries*, p. 6–8; Cumbrae-Stewart, *Boundaries of Queensland*, pp. 7–11.
- ³³ Lumb, Torres Strait islands, p. 160.
- ³⁴ Lumb, *Maritime boundaries*, pp. 7–8.
- ³⁵ Lumb, *Maritime boundaries*, pp. 7–8; Lumb, Torres Strait islands, pp. 160–63. For a more detailed discussion of the annexation in 1872 in the Torres Strait see Steve Mullins, *Torres Strait: a history of colonial occupation and culture contact 1864–1897* (Rockhampton: Central Queensland University Press, 1994), Chapter 4: The 1872 annexation, pp. 76–96. R D Lumb has considered the legal implications of the 1872 annexation in his Torres Strait islands.
- ³⁶ Marjorie G Jacobs, 'The Colonial Office and New Guinea, 1874–1884', *Historical studies Australia and New Zealand*, vol 5 no 18 (1952), pp. 106–08.
- ³⁷ QGG, 23 March 1878, p. 753; Lumb, Torres Strait islands, p. 162. Chester's appointment from the Western Pacific High Commission lapsed after the annexation of 1879.
- ³⁸ Draft of Letters Patent , 10 October 1878 appended to Secretary of State to Governor of Queensland, 16 October 1878, Annexure 2 to The new maritime boundary of Queensland (Despatches respecting), *Journals of the Legislative Council of Queensland*, 1879, p. 40; Cumbrae-Stewart, *Boundaries of Queensland*, p. 12.
- ³⁹ *Queensland Coast Islands Act* (43 Vic no 1), *Supplement to the Queensland Government gazette*, 21 June 1879, p. 1379–1380; Cumbrae-Stewart, *Boundaries of Queensland*, pp. 11–12. For a more detailed discussion of the 1879 annexation, see Mullins, *Torres Strait*, Chapter 7: The 1879 annexation, pp. 139–61.
- ⁴⁰ Lumb, *Maritime boundaries*, p. 8.
- ⁴¹ QGG, 28 September 1895, (p. 729); Lumb, Torres Strait islands, pp. 164–66.