2011 Mabo Oration: Terri Janke

Mrs Bonita Mabo, the Mabo family, Commissioner Kevin Cocks, Bryan Keon-Kohen QC, Bill Lowah, fellow Torres Strait Islanders and Aboriginal people, and those who have come to celebrate the opening of The Torres Strait Islands: A Celebration. I acknowledge the Anti-Discrimination Commission Queensland and the Queensland Performing Arts Centre for hosting tonight's oration.

I pay respect to all the traditional owners of the Brisbane area, and all elders past and present. Thank you Eddie Ruska for your welcome to country. Whenever I hear a welcome to country given from the heart, I feel strengthened and encouraged.

I am honoured to present the Mabo Oration, not only as a lawyer, but as a Torres Strait Islander. I have two grandmothers who were born in the Torres Strait. My paternal grandmother is Agnes Blanco. She was born in 1921 on Murray Island in the village of Gigrid, of the Peibre clan. She was the daughter of Azzie Leyah, a Meriam woman and Victor Blanco. Victor's mother Annie, who married Juan Blanco from the Phillipines, was from Old Mapoon in Cape York. Grandma Agnes attended Sacred Heart Convent on Thursday Island (TI), before moving to the mainland during the Second World War. My maternal grandmother is Modesta (Maudie) Mayo who was born on TI and her Torres Strait Islander heritage can be traced back to Gebar Island. She too attended Sacred Heart Convent. Maudie married Kitchell Anno, of Wuthathi and Malay descent. He was also born on TI. They moved to Cairns in the 1940s where my mother and father were born. I too, was born in Cairns. I pay my respects to my ancestors.

My oration is in four parts:

1. Firstly, I will pay tribute to Eddie Koiki Mabo and reflect on his life's work including the High Court case that bears his name.
2. Secondly, I will examine Indigenous cultural and intellectual property right within a human rights framework.
3. Thirdly, I will look at two cases that have canvassed native title rights and Indigenous cultural knowledge - *Bulun Bulun v R & T Textiles* [1] and *Western Australia v Ward* .[2]
4. Finally, I will examine Indigenous arts practice and knowledge appropriation then advocate for greater recognition of Indigenous cultural and intellectual property

rights. I will mention briefly the potential of a National Indigenous Cultural Authority to facilitate the exercise of these rights.

If all goes to plan, what I intend to show is that it was not just the rights to land, but the protection of the customs and traditions associated with the land that Eddie Mabo fought for. It was not just land as a separate category but the holistic Indigenous notion of 'customs and traditions' associated with the land including cultural expression and knowledge. I have a view that this is how Eddie Mabo saw it. This vision is what I wish to build on, and honour, in my oration.

Tribute to Eddie Mabo

Eddie Mabo's fight for justice was as much about intangible cultural heritage as it was about land. The *Mabo* case [3] recognised the continuing connections of Meriam people to their land on the Murray Islands. A majority of High Court judges recognised Indigenous people's native title to their traditional lands, thereby overturning the *terra nullius* doctrine. In 1992, I dropped out of law school. For me the case had great repercussions. True it set legal precedent. True it took away a lie. But for me, it was a shining star. Like the stars have always navigated Torres Strait Islanders, a seafaring people, Eddie Koiki Mabo's light illuminated the night sky. It was a new pathway for Indigenous people, and a personal inspiration to me. It gave me a belief that the Australian legal system could deliver Aboriginal and Torres Strait Islanders peoples' justice.

I pay tribute to Eddie Koiki Mabo. He had a strong sense of his own identity. He knew his heritage rights. He questioned what academics said in their lectures at James Cook University where he worked as a gardener. He queried what anthropologists wrote in their text books. His passion and sense of justice led his fight to the High Court. He was a family man, an artist, a writer, and a great thinker. His star will shine for many generations to come. It was his star that shone over my head in 1992. I had left law school and never thought I'd go back. But, great people have a way of inspiring us beyond our own limitations. I thought if Eddie Mabo could make an effort, I could get myself back to university and finish my law degree.

The big blue book and *terra nullius*

It started with a book: my 1987 real property law text book. It was a blue hardback book of 936 pages, with no picture on the cover. It was there that I first read about the doctrine of *terra nullius*. The case was *Milirrpum v Nabalco* .[4] In 1971, Aboriginal plaintiffs claimed that their interest in land on the Gove Peninsula in the Northern Territory had been unlawfully invaded by a mining company and the Commonwealth government. Gumatj and Rirratingu people claimed an interest in land that their ancestors had continued to live upon since time immemorial. Justice Blackburn who heard the case said that the plaintiffs could not establish communal native title to their land. Justice Blackburn relied on a long standing principle applied to the acquisition of colonial territory to deny Gumatj and Rirratingu peoples the rights to their ancestral lands.[5] Justice Blackburn referred to the principle 'which was the philosophical justification for the colonisation of the territory of the less civilised peoples; that the whole earth was open to the industry and enterprise of the human race, which had the duty and the right to develop the earth's resources, the more advanced people were therefore justified in the dispossession, if necessary, of the less advanced.'[6]

This judgment gave me no interest in being a lawyer. I left law school soon after without finishing property law. I didn't know it at the time but Eddie Mabo and the co-applicants had already commenced their case.

I went to work for the Australia Council for the Arts in the Aboriginal Arts Unit as it was called then. My colleague, Jenny Pilot, a proud Torres Strait Islander, constantly call for the inclusion of 'Torres Strait Islander' in the Unit's title [7]. During this time, 'Torres Strait Islander' was added to the Board's name. When the *Mabo* case was handed down on 3 June 1992, the flash of headlines brought the Torres Strait into international focus. The case overturned the doctrine of *terra nullius* by recognises that Indigenous interests in land could, in some circumstances, survive colonisation in the form of communal native title. The majority of judges on the High Court of Australia, defined native title as the right that exists where an Indigenous people can show that there is a continuing connection with the land, and no explicit act of government has extinguished that title.

Eddie Mabo passed away on 21 January 1992, four months before the decision was handed down. Sadly he didn't live to read the judgment, or celebrate the case. Later that year, Eddie Mabo was awarded the Human Rights Medal posthumously along with the applicants of the case, Dave Passi, Sam Passi, James Rice and Celuia Mapo Salee.[8] They continue to shine a path for us. These Murray Islanders were awarded the Human Rights Medal 'in recognition of their long and determined battle to gain justice for their people.'

I returned to university in 1993. The *Mabo* case was my calling back to law school, which I finished this time. Eddie Mabo and the other applicants had put in ten years. I cannot discount the important legal precedent, but to me the case was a story of strength, personal sacrifices for a collective cause, and a story of connections and culture. That big blue book was going to have to be revised.

In 2005, I wrote my own blue book *Butterfly song* , [9] a work of fiction. Anita Heiss called it 'a simple lesson in native title and the Mabo decision.'[10] The novel allowed me to explore the impact of the case entwined with my own personal journey as a law student and a Torres Strait Islander.

Post-Mabo: reduction of rights

The *Mabo* case set a new path. The common law had recognised Indigenous rights to land after more than 200 years of denial. It's important to note that the common law did not **create** native title. It recognised native title as a right had existed prior to, during and post colonisation. It just had never been acknowledged. The principle was laid down by the majority judges of the Mabo case. This principle was that native title rights continued where Indigenous people were able to show that the land and seas continued to be traditionally owned, in accordance with law and customs.

Moving forward, the agenda for rights recognition included the *Native Title Act 1993* , the establishment of an Indigenous land fund, (now the Indigenous Land Corporation) and a third component - the Social Justice Package, designed to redress the longstanding disadvantage suffered by Indigenous Australians. The Social Justice Package included Indigenous cultural and intellectual property rights, that is, Aboriginal and Torres Strait Islander people's right to their heritage. Rights to heritage include land, seas, and all connected to it, such as knowledge, stories, song and dance.

Around 1995, the government established an enquiry to look at Indigenous Cultural and Intellectual Property rights. I worked as a solicitor for Michael Frankel and Company to

deliver *Our Culture, Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights* .[11] Advised by an Indigenous Reference Group, *Our Culture, Our Future* was released in 1999. The report recommended new laws and set out a comprehensive framework to recognise Indigenous rights to culture. With the Keating government no longer in power, the rights agenda was side-tracked. No new laws have been enacted.

The focus of the *Native Title Act 1993* has moved away from the foundation of rights set down in the *Mabo* case. A major flaw is the heavy burden placed on Indigenous people to claim their rights. Paul Keating, the former Prime Minister said in May this year at the Lowitja O'Donoghue Oration:

> *This onerous burden of proof has placed an unjust burden on those native title claimants who have suffered the most severe dispossession and social disruption. It has substantially slowed the right of redress by Aboriginal people to adequate recognition of their rights in respect of land, water and other natural resources.[12]*

Keating and many other commentators, including the Chief Justice of the High Court, Justice French, have called for the reversal of the onus of proof.

At Eddie Mabo's funeral in Townsville in February 1992, Bryan Keon-Kohen QC said that the case was sparked by a speech Eddie Mabo gave at a Conference 'where he spoke of Murray Island customs and traditions concerning land and urged that something should be done to have those customs recognised in Australian law'[13]. Eddie Mabo's call was for his cultural rights as a Torres Strait Islander man. His fight was for the holistic recognition of customs and traditions associated with land and seas. These were rights as Eddie Mabo saw it, to his cultural heritage including the rights to cultural expression, and knowledge.

I learnt in the course of preparing for this Oration that Eddie Mabo was a member of the Aboriginal Arts Board of the Australia Council in 1975 [14] when the Board was concerned with the question of copyright for Aboriginal art, music, dance and design [15]. The Board's aim was to promote 'a renaissance of Aboriginal culture and to stimulate Aboriginal artistic endeavour in all forms of the arts, both traditional and non-traditional.'[16] However, the copyright law made no provision for the protection of traditional works of 'tribal ownership'. Works of cultural significance were being copied in poor quality, and the spiritual connection between the artist and art, and the land, was degraded. The Aboriginal Arts Board called for new legislation 'on the protection of traditional Aboriginal heritage which belongs not to an identifiable Aboriginal but to a whole group.' Forty years on, there has been no special legislation. Aboriginal and Torres Strait Islander creators do make greater use of copyright. Yet, there are still limitations. Copyright only protects Indigenous works that meet the requirement of material form. Oral culture is not protected and is open to exploitation when it is recorded. Copyright and intellectual property rights protect individual rights. Indigenous peoples' rights to their collective heritage are not recognised.

Another thing about Eddie Mabo that links into my topic is his work in the 1970s in establishing the Black Community School in Townsville. The School aimed to, among other things, give black children an alternative education more suited to their cultural needs.[17]

It was a strong attempt to bring cultural education to Torres Strait Islander youth. The School was part of Eddie's vision for Torres Strait Islanders on the mainland to learn their island culture. Brian Bero, a Torres Strait lawyer living in Sydney, proudly told me that Eddie was his teacher, and was an inspiration to him. Brian said that this experience had given him a strong cultural grounding.

Tag Mauki Mauki, Teter Mauki Mauki

Bill Lowah, a Torres Strait Islander social commentator, said that there was one universal aspect of the law for all cultures that was understood, and for Torres Strait Islanders it was this basic principle that lead to the High Court's decision in the*Mabo* case:

> *Tag Mauki Mauki,*
> *Teter Mauki Mauki*
>
> *'Your hand can't take something that does not belong to you unless you have permission.*
> *Your feet cannot walk in, or through someone else's land, unless there is permission.'*

He advised me that this law is about land and all things connected with it. The tangible and intangible, the spiritual and cultural. This principle is as strong as it is for land, for story, and for culture. For Torres Strait Islanders, this principle applies to Ailan Kastom. Ailan Kastom is the body of customs, traditions, observances and beliefs of Torres Strait Islanders. It includes customs, traditions, observances and beliefs relating to particular places, persons, areas, objects or relationships.

Indigenous people have customary rights and obligations to their Indigenous knowledge, cultural expression, just like land. Sometimes that knowledge is sacred, but at all times that knowledge comes from a place and forms the identity of the people. There are rules about how it should be respected, and reproduced, disseminated and interpreted.

Native title recognises Indigenous people's collective rights to land and seas. It is arguable that the foundation principles of the *Mabo* case could allow for the protection of Indigenous knowledge and cultural and intellectual property rights. However, the courts have been reluctant to recognise that Indigenous cultural knowledge is a right within native title. In the Miriuwung Gajerrong case, *Western Australia v Ward* [18] , a case the High Court majority did not acknowledge that a cultural knowledge right was a native title right. Ironically, cultural material is used in native title claims as evidence. The stories, the songs, the art, the dances, the cultural knowledge are the proof of the connection to land and seas, for native title. This knowledge is put on the record, entered into evidence for the purposes of showing a continuing connection. This creates a paradox, and a risk of further alienating Indigenous people from their culture. The cultural knowledge is orally given by Indigenous people where it is recorded, collected and ultimately stored.

I will look at the case later, but before I do, I'd like to discuss the importance of Indigenous cultural and intellectual property rights as human rights. Back to top

Indigenous cultural and intellectual property rights

Commissioner Kevin Cocks, who is also a recipient of the Human Rights Medal, visited me at my Sydney office. We spoke about how cultural knowledge was not considered to be included in the bundle of rights that comprise native title rights. I noted that the division between the intangible and tangible aspects had created a false division. Commissioner Cocks reminded me that a similar ambivalence exists in human rights. Once universally premised, the splitting of economic, social and cultural rights from civil and political rights has had the result that greater emphasis is given to the latter. The *Universal Declaration of Human Rights*, drafted 62 years ago, combined political and civil rights and economic, social

and cultural rights. In 1966, human rights were divided into the *International Convention on Civil and Political Rights* and the *International Convention of Economic, Social and Cultural Rights*. But the two are indivisible, and set an imbalance for policy and law-makers.

Indigenous people's rights to land are inter-connected with the rights to stories, song, dance, resources, totems, and relationships of kin, associated with land. Land is the foundation of economic, social and cultural rights. But the rights to culture and land are entwined. The right to culture is an important human right in an age where many Indigenous people live away from ancestral lands. Further, it is significant to continue links with cultural knowledge where global information can be digitally recorded, altered, reused and claimed and interpreted by anyone in the world. Is Indigenous arts, cultural expression and traditional knowledge *terra nullius?*

Indigenous cultural and intellectual property rights are Indigenous peoples' rights to their heritage. Heritage includes the tangible and intangible heritage that is passed on through generation to generation pertaining to Indigenous peoples, and is all part of expression of their identity. This includes literary, artistic and performing arts, traditional knowledge, cultural property and documentation of Indigenous peoples' heritage. Back to top

Declaration on the Rights of Indigenous Peoples

The *Declaration on the Rights of Indigenous Peoples* passed through the full General Assembly of the United Nations on 13 September 2007. Although the Howard Government did not sign on to the Declaration on passing, the Rudd Government officially supported the Declaration in April 2009.[19] Article 31 of the Declaration deals with 'the right of Indigenous peoples:

> *to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as their manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.*

Importantly, Article 31(2) requires the states to take effective measures to ensure the ongoing recognition and protection of these rights.

The Declaration has not yet been ratified for implementation by the government, and its status under international law is as an inspirational document. Associate Professor and Director of the Indigenous Law Centre, Megan Davis describes the Declaration as an aspirational rights document. It may however, be a reference to standard setting practices which the Australian courts can look to in reaching their decisions; and policy-makers when drafting Indigenous policy.[20] Back to top

Cases in protecting knowledge and cultural expression

Copyright and traditional ritual knowledge

In 1997, the Federal Court case of *Bulun Bulun v R & T Textiles* concerned imported fabric reproducing Mr Bulun Bulun's art and the designs of his people. It was a copyright infringement of unauthorised reproduction of John Bulun Bulun's bark painting, A*t the*

Waterhole. The painting was of magpie geese and waterlilies but encoded cultural knowledge, pertaining to the Ganalbingu clan's rights to their land. The Aboriginal artist was the copyright owner of the artistic work, having rights under copyright, which last for 70 years after the death of the artist (Mr Bulun Bulun is deceased). He was able to stop the sale and importation of the fabrics. But the case went before Justice von Dousa to consider the communal rights of the clan, to the communally owned 'traditional ritual knowledge' incorporated in the work.

John Bulun Bulun pleaded that the communal rights in art were an incident of his clan's native title claim to its traditional lands. Bulun Bulun's clan group, the Ganalbingu clan, were traditional owners of land under the *Aboriginal Land Rights Act 1976* (NT) however there was no determination of native title to that land. Justice von Doussa held that the court was without jurisdiction to make the determination of native title in these proceedings, because no application for the determination of a native title claim had been commenced by the applicant or the clan group.[21] In *obiter dictum* (which means remarks made by a judge which are not necessary to reaching a decision), Justice von Doussa did go on to discuss whether there was a native title right to paint traditional ritual designs. An interesting point raised was whether the enactment of the *Copyright Act 1968* itself, was an act of extinguishment of any native title right to create artistic work, if indeed, the right to paint was a native title right.[22]

The native title issue aside, Justice von Doussa went on to find that there was a fiduciary relationship between the artist as the copyright owner, and the clan. Customary laws impacted on the rights of the artist to deal with the work embodying the ritual knowledge in a way that he had to discuss and negotiate use of the traditional knowledge with relevant persons in authority within his clan. This relationship imposed the obligation on John Bulun Bulun not to 'exploit the artistic work in a way that is contrary to the law and customs of the Ganalbingu people, and, in the event of infringement by a third party, to take reasonable and appropriate action to restrain and remedy infringement of the copyright in the artistic work.' If the artist had been unable or unwilling to take copyright action, equity would have allowed the clan leader to take action to stop the infringement.

It is this fiduciary obligation owed by the copyright owner artist to the collective that has been the subject of much legal analysis. The question is: Does this fiduciary obligation extend in certain circumstances where notice of the 'Bulun Bulun equity' is given to copyright owners of other cultural material incorporating traditional ritual knowledge? For example, would this duty have implications for scholars, authors, filmmakers, sound recordists, compilers, researchers and other recordists of Indigenous traditional knowledge and cultural expression, where copyright is created? Perhaps they have a similar fiduciary duty to manage the works in a manner consistent with Indigenous customs.[23] Back to top

The Ward Case

n 2002, the High Court of Australia case *Western Australia v Ward* [24] examined the nature and principles of extinguishment of native title. It involved a claim by the Miriuwung Gajerrong peoples to their land in the East Kimberley and parts of the Northern Territory. The case also presented an opportunity for the High Court to consider whether there was a connection between native title rights and cultural knowledge.[25] Back to top

Section 223(1) - a right in relation to land or waters?

Section 223(1) of the *Native Title Act 1993* (Cwth) was put under the court's judicial microscope to consider whether rights to cultural knowledge were recognised as 'the communal, group or individual rights and interests of Aboriginal people or Torres Strait Islanders in relation to land or waters.'

The majority judges, Chief Justice Gleeson and Justices Gaudron, Gummow and Hayne, considered that it was unlikely that 'a right to maintain, protect and prevent the misuse of cultural knowledge is a right in relation to land of the kind that can be the subject of a determination in native title.'[26] Cultural knowledge was difficult to define in terms of the limits and boundaries of the subject matter. According to the majority of judges, the submission made on behalf of the applicants was too vaguely referenced. Whilst the four judges were prepared to consider that respecting access to rock art sites, or places where ceremonies were performed, and traditional laws manifested at these sites are a connection with land, the full content of the right as drafted on behalf of the applications was going too far. The applicant's submission claimed rights to control 'the inappropriate viewing, hearing or reproduction of secret ceremonies, artworks, song cycles and sacred narrative.' The court said that what was asserted was something approaching an incorporeal right akin to a new species of intellectual property. The 'recognition' of this right would extend beyond denial and control of access to land held under native title. It would, so it appears, involve, for example, the restraint of visual or auditory reproductions of what was to be found there or took place there, or elsewhere.'[27]

Following on from the *Bulun Bulun* case, the majority of judges supported Justice von Doussa's findings in the *Bulun Bulun*case that ownership of land and ownership of artistic works are separate statutory and common law institutions. To merge the two by recognising native title rights include cultural knowledge would fracture a 'skeletal principle' of the common law. This further supported their dismissal of the argument that native title rights were connected to rights to cultural knowledge. Back to top

Intellectual property laws provide sufficient protection

The majority justices of the High Court considered cultural knowledge to be sufficiently protected at law with confidential information, copyright, fiduciary duties and moral rights.

The 1976 Federal Court case of *Foster v Mountford* [28] involved the application of common law confidential information laws to stop the publication of a book on Pitjantjatjara sacred men's ceremony where the publication was likely to be detrimental to Aboriginal society. I should note though, the publication was only stopped in the Northern Territory. The digital age, the world wide web, Twitter, Facebook and mobile phone makes it even more difficult to stop the wide dissemination of Indigenous cultural material. Confidential information as a remedy at law would only be available for unpublished material. A great amount of knowledge - sacred, significant and culturally relevant, is already recorded for the purposes of preserving 'dying culture'.

Copyright laws have extended their reach to cover protection of Indigenous cultural interests. An example of this is the 1995 case of *Milpurrurru v Indofurn* [29] (referred to as the Carpets Case) where the court found copyright protected works of pre-existing clan designs that had sufficient skill, labour and effort to create the new work. Further, the judge made a collective award to the Aboriginal artists rather than individual awards so that the artists could make the distribution in accordance with custom. There was also a component for cultural harm included in the damages award, for those living artists who suffered potential loss of the right to paint their cultural images because of their connection with the derogatory reproductions of clan imagery.

I have already mentioned the case of *Bulun Bulun v R & T Textiles* where Justice von Doussa found that there was a fiduciary obligation owned by the artist to the clan. The judgment says:

> *'if the copyright owner of an artistic work which embodies ritual knowledge of an Aboriginal clan is being used inappropriately, and the copyright*

owner fails or refuses to take appropriate action to enforce copyright, the Australian legal system will permit remedial action through the courts by the clan.' [30]

This is perhaps an opening for greater use of copyright law, but it must extend also to non-Indigenous copyright owners. A question also is whether the rights allow control of the reproduction of cultural knowledge by a clan.

Moral rights were introduced into the Australian *Copyright Act* in 2001. The moral rights regime includes the right of integrity, the right against false attribution and the right of attribution. As it currently stands the law provides moral rights to the author, the creator of a copyright work. This may be sufficient where an Indigenous person is the author as recognised by the*Copyright Act* . But in reality, cultural knowledge is recorded by anthropologists, filmmakers and writers. These people can take action for their individual moral rights but what if the author is not the relevant traditional owner?

In the case of a filmmaker of a documentary, copyright creation and moral rights belong to the director and the producer and not to the family who may have contributed considerable information to the storyline. Whilst there were drafted amendments to bring into law, Indigenous communal moral rights to the *Copyright Act* , these were never made law.

There are no Indigenous communal moral rights, that is, the right of Indigenous communities or clan elders to take action for disrespectful use of cultural works, or where such works are falsely attributed, or not attributed at all is not available. Due to the pressing of then Aboriginal Senator, Aden Ridgeway, at the time the moral rights bill was passed through the Senate, the Government had drafted an Indigenous communal moral rights Bill in 2003, which was proposing the inclusion of these rights to the *Copyright Act* . The draft bill never saw the inside of the parliament, and appears to be no longer on the legislative agenda. Back to top

Justice Kirby's dissent

In the *Ward* case Justice Kirby dissented from the majority. He disagreed that the recognition of native title rights analogous to intellectual property rights would fracture a skeletal principle of common law. Justice Kirby pointed out that this had been *obiter dictum*, that is things said by the way by a judge, that are not binding as a precedent.

Further, Justice Kirby questioned whether there is sufficient protection for traditional knowledge under existing IP laws. In his view, 'the established laws of intellectual property are ill-equipped to provide full protection of the kind sought in this case.' This concern was raised by Justice French (now the Chief Justice of the High Court) in the 1988 case of *Yumbulul v Reserve Bank* . Terry Yumbulul's sacred morning star pole had been reproduced on the bicentennial ten dollar note, Justice French did not provide a copyright remedy to the artist, because the licence was validly exercised under copyright laws. Justice French then noted that copyright does not 'provide adequate recognition of Aboriginal community claims to regulate the reproduction and use of works which are essentially communal in origin.' [31]

Most significantly, on the point of cultural knowledge Justice Kirby said it was difficult but possible to define the scope of cultural knowledge.[32] He said that it had been accepted that the connection between Indigenous people and the land 'is inherently spiritual and that the cultural knowledge belonging to Aboriginal people is, by Indigenous accounts, inextricably linked with their land and waters, that is, with their 'country'. In evidence, the Ningarmara appellants described the 'land-relatedness' of their spiritual beliefs and cultural

narrative. Dreaming beings located at certain sites, for example, are deplicted in song cycles, dance rituals and body designs:

> *If cultural knowledge, as exhibited in ceremony, performance, artistic creation and narrative, is inherently related to the land according to Aboriginal beliefs, it follows logically that the right to protect such knowledge is therefore related to the land for the purposes of the* Native Title Act 1993 *(Cwth).[33]*

The case shows that the *Native Title Act* as currently interpreted falls short of the claim for rights called for by Eddie Mabo, and other Indigenous people. It interprets the scope narrowly, and this affirms the fact that native title is a contrast of the law, which although taking its content from Indigenous customs and laws, the way which the recognition of that Indigenous system is limited to specific rights relating to access to physical areas means it is not the whole Indigenous legal system that is recognised but only the tangible parts of it.

Contemporary arts practice: protocols

This separation from the land of cultural knowledge and arts is not how Indigenous people practice generally practice culture day by day. The principle of *Tag Mauki Mauki* is still one which guides contemporary arts practice, and knowledge transfer, of Torres Strait Islanders, and it continues despite movements away from the land and seas. The linking back to land and place is a cultural continuum. More than 85% of Torres Strait Islanders live outside the Torres Strait. [34] The movements that occurred for work in sugar cane, railways and, later, government departments, are part of Torres Strait Islander cultural story: for instance, *Dancing on the Line*, part of the Torres Strait Islander Railway Histories Project, is a theatre production about Torres Strait Islanders working on the railways. This life experience is recognised as a Torres Strait Islander cultural one. .As we move in new communities, with our Aboriginal brothers and sisters, we have new horizons. But, it is important to keep connected to the source, the Island place. This is where protocols lead people to the proper way, just like stars.

Protocols are ways of keeping cultural connections strong. Protocols arise from value systems and cultural principles developed within and across communities over time. Protocols require consultation and consent with relevant Indigenous people for the use of knowledge and cultural expression. Protocols note that responsible use of Indigenous cultural knowledge and cultural expression will ensure that Indigenous cultures are maintained and protected from derogatory treatment or theft. In this way, cultural knowledge can be passed on to future generations.[35] In this way new works based on old works must recognise and respect the cultural source. Back to top

Dance

I wrote the Australia Council artform protocols which advocate for following cultural protocols in the development of art projects in visual arts, dance, music, media and literature. Elma Kris, Torres Strait Islander and Bangarra Dancer, appears on the cover. It's an interesting example - dance because it illustrates so many of the shortfalls of copyright in protecting traditional dance.

A choreographer can create a new dance from a traditional dance. Copyright protects the new work created from traditional knowledge or expression and the rights belong to the author as the creator. In many ways, copyright becomes an important legal right for Indigenous creators. In the absence of Indigenous cultural and intellectual property rights, copyright is a way of using the western legal system to protect cultural rights. But it is not

perfect. As I have already said, copyright only protects works in material form. It doesn't protect the oral tradition or performance. A traditional dance is in that fuzzy ground where it's too old for copyright protection; no individual owns it - *terra nullius*?

Bangarra Dance Theatre's artists develop strong connections to traditional communities and explore their own cultural heritage where these links exist. The company's dancers and choreographers bring their individual skills and interpretation to make new dance steps drawing from the traditional forms. Their practice is informed by cultural protocol and the recognition that the traditional knowledge will remain with the relevant traditional owners.[36]

The filming of dancing then becomes a problem for Aboriginal and Torres Strait Islander dancers, because they might see it copied by others who have no connection with the dance. There is a separate copyright in the film that belongs to the filmmaker, often not the Indigenous dance group. Audiences can capture a dance performance on their mobile phone, or digital camera that is marginally bigger than your hand. Uploads on YouTube, Facebook and Flickr mean that the dance can go to a wider audience. Performers have the right to control recordings of their performances, to say who can and who can't film them, but this right must be exercised at the time the recording is taken. Where does it go? Who can access it? Are we keeping tracks to make sure that the source will be recognised, and the culture respected?

Visual arts

Torres Strait Islander artists use cultural stories and icons in their work. For instance, in print-making, there are many examples of Torres Strait Islanders artists who have depicted traditional stories, told to them by elders. The transfer of knowledge takes place to carry on the knowledge, and connections to land, but in the arts industry, there is also an economic dimension. When writing the Australia Council protocols for visual arts, I became aware of the practice of one Torres Strait Islander artist of sharing ten per cent of the sale price of his artistic work with the cultural storyteller. Generally to depict a story, to adapt it to the artistic form from an oral work, would not require any recognition of that oral storyteller, or a sharing of the benefits. But this Torres Strait Islander artist was working with the long established cultural practice of seeking consent, and not taking what is not yours, and continuing to be culturally respectful.

Recording cultural expression

Recorded forms of Indigenous cultural expression, once recorded, are in danger of being treated as *terra nullius*, belonging to no one, and claimed by the person who makes the record. This is a particular concern for cultures that are recorded by others, for ethnographic purposes originally, but where the recordists have deposited the recordings in archives far away from the relevant communities.

The example that best illustrates this is the use of the Solomon Islander lullaby by the French group Deep Forest. You might remember the hit song 'Sweet Lullaby' in the 1990s. I'd sing it for you but it would be against the law - not copyright, but noise pollution. Jokes aside, this cultural lullaby was recorded on the Island of Fataleka in 1969 by ethnomusicologist Hugo Zemp.[37] The recording was originally made to ethnographically record threatened traditions. The song was old, and had been handed down through the generations. The sample was sourced from the Paris based UNESCO archive. It was used without the permission from the Solomon Islands, although in the copyright context, the recording copyright belonged to the ethnomusicologist Hugo Zemp. There are issues with the context, the lack of proper attribution and as one report puts it, 'No one in the Solomon Islands has ever seen a dollar from the millions generated from the royalties of the French duo Deep Forest.'[38] Deep pockets more like it from the cultural expression of a marginalised cultural group.

This is an example of where rights to cultural recordings empower the recorder and not the cultural owners, an issue that the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) in Canberra has tried to redress with its *Audio-visual Archive Code of Ethics*.[39] This requires people who access audio visual content in the collection to clear publication of the Indigenous sound recordings, films, and photographs with not just copyright owners, as required under law, but with the Indigenous community. This means that had Deep Forest asked AIATSIS for use of the sound recording of the lullaby they would have required not just permission from Hugo Zemp, but also the Island community in the Solomon Islands before making the recording available.

That story of the 'Sweet Lullaby' song is interesting. Not only did the song become a big hit, it has been used and reused to promote major events, commercials, and on television. It was used by the dancing man, Matt Harding, as he danced all over the world.[40]

Interestingly, when Matt heard of the Solomon Islander origin of the song, and the copyright issue, he stopped using it, and travelled to the Solomon Islands to find out more about the singer and the song's cultural source. This too, I should say is all documented on the internet, but it aims to put the record straight.

The primary purpose for the recording of cultural material lies in its value for cultural maintenance purposes and reclamation of cultural practices by Indigenous people, whose cultures have been interrupted. We, as Torres Strait Islanders, can actively visit these places to connect to customs and practices, songs, stories and dances, film, photographs and records. It was warming to watch the SBS documentary 'So who do you think you are?' with Christine Anu, the talented and beautiful Torres Strait Islander diva. Christine Anu's journey led to the discovery of a sound recording held at AIATSIS where her grandfather sings a traditional war song from Sabai Island, accompanied by a lone drumbeat. Christine's grandfather was a songman who had been recorded by ethnomusicologist Wolfgang Laade in 1963.[41] Back to top

Filming and Indigenous cultural expression

Film presents interesting challenges as a medium that has wide dissemination and can be edited and used. Films can be of people, places, objects, sacred and secret, and many Aboriginal and Torres Strait Islander people view this media as a risk when recording cultural knowledge and expression. But it shouldn't be like that if Indigenous people exercise their prior informed consent to film Indigenous cultural and intellectual property, and filmmakers follow protocols, like the Screen Australia, *Pathways and Protocols* .[42]

Recently I watched a BBC documentary *Hidden Treasures of Australian art* where the Welsh comedian Griff Rhys-Jones travelled to the Torres Strait. [43] Griff Rhys-Jones took with him a photograph of a mask held in the British Museum. He travelled to each island in search of the mask's origin and the answer to his question 'Can traditional arts survive in the modern world'? Looking for proof, Rhys-Jones wanted to film the sacred rocks on one of the islands. The Island committee elders were filmed at a meeting to discuss Griff Rhys-Jones' request. We see the elders discuss in language with knitted brows, heads down. Griff Rhys-Jones looks on nervously then says to the camera, It doesn't look to be going very wel . The Elders decided not to allow filming because they want to keep the rock art their secret. I guess they learn from the many times where rock art has been copied without reference or permission of Indigenous cultural custodians. The example of the wandjina, the rock art figures from the Kimberley, traditional knowledge and cultural expression of the Ngarinyin, Wunambal and Worora people of Western Australia, perhaps weighed in their minds. The wandjina stone sculpture controversy,*Wandjina Watchers in the Whispering Stone* involved a non-Indigenous person who commissioned a wandjina sculpture in Katoomba at the front of a gallery. This example highlights misuses of the image of a wandjina, which is sacred to

these Kimberley-based Aboriginal clans. In considering the request to film rock art sites on Murray Island, the elder spoke their intent to keep it sacred, so they would not allow the documentary film with worldwide dissemination that would make the secret known to millions of people. It was interesting to see prior informed consent exercised by the traditional elders. Griff Rhys-Jones was respectful, and did not film the art sites. Back to top

Museums and archives - continuing obligations

But what of that mask from the British museum, and other objects like it? Torres Strait Islander cultural objects, and knowledge collected from the past is held by institutions who display, digitise, and reproduce, and allow others access. The physical chattels, the objects, the papers, the art, are owned by these institutions, but what of the knowledge and information embodied within them? Too ancient for copyright, or where the author is unknown, they too are at risk of being treated as *terra nullius*. But just like land, these things are connected to a living people. These institutions are realising that they must consult with Indigenous people concerning the display, exhibition, repatriation and interpretation of their traditional intellectual property.

In some instances, the return of such materials, or the loan of them, has been negotiated to allow cultural revival of practices. The great cultural leader, Ephraim Bani, was successful in having the return of cultural materials and had an instrumental role in establishing a keeping place in the Torres Strait, the Gab Titui Cultural Centre. We are grateful to the work of the late Ephraim Bani.

The National Library of Australia holds the Mabo Collection of artworks, transcripts and writings by Eddie Koiki Mabo as a system for protecting them. But in doing so, it must continue its ongoing obligation to the Mabo family, to consult about the use of this material, and to recognise Indigenous cultural and intellectual property rights.

I want to make special mention the special arrangement being entering into between the North Stradbroke Island Historical Museum and the Walker Family for the Oodgeroo of the Tribe Noonuccal Custodian of the Land Minjerribah Collection.[44] The North Stradbroke Island Historical Museum is preparing to enter into agreement with the Walker Family to manage the collection into the future. The ownership of the collection will always remain with the Walker family. Members of the family will be employed within the Museum to look after and interpret the collection which includes manuscripts, photographs, films and artistic works of the great Australian author, poet and leader, Oodergoo Noonuccal. This means that the collection will stay on her traditional land. Back to top

Myths and legends of the Torres Strait

A common complaint by Indigenous people is that the recorders of culture have ended up with the copyright ownership of written records and stories because copyright law protects the material form rather than the oral tradition itself. The favouring of copyright over traditional cultural rights has meant that many cultural resources, to which Indigenous people have wanted access, have been held under the control of copyright owners, the recorders of their culture. The State Library of Queensland holds the Margaret Lawrie Collection of Torres Strait Islands Material, comprising her writings, as well as art and cultural material, such as language, history and cultural objects, collected from her travels to the Torres Strait from 1964 until 1973.

'Retold' is an example of a project of collaborative repatriation of culture which recognises the cultural rights of Aboriginal and Torres Strait Islander people to reclaim their cultural assets. Torres Strait Islander language and cultural consultant Leanora Adidi worked on the 'Retold' project with the State Library of Queensland.[45] 'Retold' recounts the stories

recorded by the non-Indigenous author Margaret Lawrie in *Myths and Legends of Torres Strait* .[46]

Cultural knowledge of plants and animals

I've spoken a lot about cultural expression, but the issues are the same for cultural knowledge about plants and animals. When I was a kid I had very bad eczema. I remember an Uncle mixing traditional bush medicine to stop the itch and heal my flaking skin. It was a remedy he kept secret and it soothed my skin. This is just one example of the healing knowledge Indigenous people have of plants and animals. They also have knowledge of bush foods, and other environmental knowledge that has commercial value for new medicines, skin creams and health foods. The use of traditional knowledge of Indigenous people and resources has caused international concerns especially where pharmaceutical companies have attempted to claim patent rights.

Some examples internationally include the Rooibos/honeybush tea from South Africa used as traditionally for allergies, asthma and skin rashes[47] ; the Hoodia plant found in the Kalahari desert, has been used for generations to suppress thirst and hunger is now used for slim pills [48] and the ceremonial Pacific drink Kava from the Pacific now used to relieve anxiety and insomnia.[49]

In 2010, the US cosmetics company Mary Kay Inc applied for a patent for 'compositions comprising Kakadu plum extract'.[50] The Kakadu plum or gubbinge had been used by Indigenous people in the northern territory as a traditional bush food, and healing agent. No discussions at all were had with these groups, and obviously the patent application was met with negative response from these Indigenous groups. The Australian Patents Office has requested more information from Mary Kay Inc to overcome technical issues concerning the patent's validity. The example highlights the fact that Indigenous knowledge and resources are in demand, but that Indigenous people need to be getting the benefits from this.

Article 8(j) of the *Convention on Biological Diversity* , which Australia has signed, includes provisions for recognising Indigenous people in access and benefit sharing, but there is much more work to be done. The exercise of these rights depends on the state or territory, and tenure of the land where the resource is accessed and cultural knowledge of Indigenous people is too easy to dismiss.

If we look to our Pacific neighbours in New Zealand, the Maori Flora and Fauna Cultural Property Claim is due to be finalised in the Waitangi Tribunal. It is known as the WAI 262' as it is the two hundred and sixty second claim before the Waitangi Tribunal. It was lodged in 1991 a few years after two Maori women found that the NZ Department of Scientific and Industrial Research (DSIR) had deposited several cultivars of kumara, the native 'sweet potato', at a research institution in Japan. Maori people had brought the kumera to New Zealand, but it was no longer available there. The two women travelled to Japan to seek the return of the kumara.[51] The claim addresses Maori concerns at the ease with which their plants and animals can be lost to overseas interests, and the lack of Maori involvement in decisions about native flora and fauna. The claim looks at the question - What rights do Maori have to the cultural knowledge, and the plants and animals of the Aetearora? It will be interesting to see what conclusions are reached in terms of intellectual property, and what lessons there are for us. But unlike New Zealand, we do not have a treaty. Back to top

Our cultural future

Some positive outcomes for Indigenous people may come from the work being undertaken at an international level by the World Intellectual Property Organisation (WIPO) on traditional knowledge. WIPO is the international body responsible for copyright, patents and trade marks. It has formed an inter-governmental committee ten years ago to look at the protection of traditional knowledge and traditional cultural expression. That IGC has the mandate to complete an international document by September 2011 for consideration by the WIPO General Assembly. Perhaps there might be an international document that reflects the rights of Indigenous people to their traditional knowledge and cultural expression. Back to top

Keeping records is important

Keeping records of culture is important for Indigenous people for range of reasons including claiming legal rights, reviving cultural practices and inter-generational transfer of knowledge. As the old people pass away, more and more stories and knowledge could go, if we do not interact with it, record it, keep it alive in our heads and hearts.

The recording of Indigenous cultural and intellectual property rights becomes more important for Islanders, especially where there is also a physical threat to culture, which requires us to consider how we will preserve it. I am speaking about climate change, and the impact it may have on the Torres Strait. In May 2011, the Torres Strait Regional Island Council mayor Fred Gela expressed his devastation that the Climate Commission had omitted to include the Torres Strait islands in a major report.[52] The report, *The Critical Debate* highlighted the impact on Australia under climate change. Fred Gela felt that was a huge oversight given that six of the islands in the Torres Strait were then seen as being potentially exposed to evacuation within decades. If these islands are evacuated, or are sub-merged by water, what does this mean for continuing culture? Recording cultural knowledge of sites, places, people, and being able to control this according to customs and traditions, become important rights, moving forward.

A National Indigenous Cultural Authority

In having these rights, Indigenous people will need the infrastructure to support the exercise of them. I think we should aim keep this as a people's movement, and establish a national alliance organisation. There is a role for a national Indigenous cultural authority to assist Indigenous people and collecting institutions as well as other third party users of Indigenous Intellectual Property holders, film makers and others come to an arrangement for the use of their cultural property. The authority can keep a record of where that material ends up. When I attended the 2020 Summit, I proposed a national indigenous cultural authority to assists the users and owners of cultural expression to negotiate and agree on uses of cultural material. This idea was further in my paper *Beyond Guarding Ground* .[53] A National Indigenous Cultural Authority would provide infrastructure to allow Indigenous people to facilitate the entering of fair and equitable relationships for the use of their cultural expression, in films for example, in music, books, and where it is commercialised for new medicines.

A National Indigenous Cultural Authority could set standard protocols to be followed. Where there is an infringement or a breach of those protocols, a National Indigenous Cultural Authority could assist the traditional owner group to take action on the infringement. Using alliances, the National Indigenous Cultural Authority could assist Indigenous cultural owners to take action or negotiate terms for acceptable use. In this way, there would be transparency to the process so that people know exactly what was agreed for the use of their cultural material. If there are any disputes, a National Indigenous Cultural Authority should have alternative dispute resolution processes at its disposal. Using tools such as a fair trade or ethical trade mark we can keep cultural practices concerning traditional art, dance and craft we need to observe cultural protocols and a National Indigenous Cultural Authority could be a way of providing support to Indigenous groups to keep culture on track.

Conclusion

In ending, I return to that shining star. Eddie Mabo knew the importance of keeping culture alive, no matter where you lived, or how far you travelled from your island home. Eddie Mabo impressed upon us the importance of Torres Strait Islanders maintaining cultural practices. He knew the challenges for maintaining culture. How do we keep cultural alive, if we don't live on that island? We do so by keeping the spiritual connection, by knowing family and connection to land and place. We look to our schools, our cultural institution to include our arts and culture. But our rights to our cultural knowledge must also be recognised.

Eddie Koiki Mabo's call for justice was about cultural heritage rights. I believe his vision was for more than what the native title has delivered. Eddie Mabo knew the importance of the arts and culture in continued belonging. In the spirit of Eddie Mabo, we need to continue his call and assert rights to our Indigenous cultural and intellectual property.

The cultural future of Indigenous people depends on being able to navigate through the conventional legal framework of intellectual property, native title and heritage rights. But in recognition of Indigenous legal systems, the principle of *Tag Mauki Mauki, Teter Mauki Mauki* remains strong. 'Your hand can't take something that does not belong to you unless you have permission. Your feet cannot walk in, or through someone else's land, unless there is permission.' This principle must be recognised holistically. In light of the United Nation's Declaration on the Rights of Indigenous People, Australian law should recognise of our rights to Indigenous cultural knowledge, and expressions, our Ailan Kastom.

A Torres Strait Islander person's connection to Torres Strait Islander heritage, like all Indigenous people, is expressed in contemporary life through his or her relationship with land, seas, plants and animals, and their relationship with other people. It informs our day to day life, our creative output. It is the heart of our identity. We can keep culture strong, follow the stars, like the seafaring people of the Torres Strait, and follow cultural protocols.

I once again thank the Mabo Family for giving me the honour of delivering this Oration in the name of a great Australian. When I look up to night sky, I thank Eddie Koiki Mabo, for his passionate leadership. May your star shine brightly for this and many more generations to come.

Footnotes

1. Bulun Bulun v R & T Textiles Pty Ltd (1998) 41 IPR 513.
2. Western Australia v Ward (2000) 170 ALR 159.
3. Mabo v Queensland (No 2) (1992) 175 CLR 1.
4. Milurrpum and Others v Nabalco Pty Ltd and the Commonwealth of Australia (1971) 17 FLR 141.
5. The Arhnemland traditional owners signed an agreement with Rio Tinto Alcan this year to secure the operation of the established bauxite mine and alumina refinery on the Gove Peninsula for another 42 years. This is the first agreement for the development since 1969 when mining commenced.
6. Justice Blackburn in Milurrpum and Others v Nabalco Pty Ltd and the Commonwealth of Australia (1971) 17 FLR 141.
7. 'Torres Strait Islander' is now included.
8. Barbara Hocking was also awarded the Human Rights Medal in 1992 in recognition of her contribution to the Mabo case and for her work over many years to gain legal recognition for Indigenous people's rights.

9. Terri Janke, Butterfly song, Penguin, Camberwell, 2005.
10. Anita Heiss blog, viewed 20 June 2011.
11. Terri Janke, Our Culture: Our Future- report on Australian Indigenous cultural and intellectual property rights, Michael Frankel and Company, produced under commission of the Aboriginal and Torres Strait Islander Commission and the Australian Institute of Aboriginal and Torres Strait Islander Studies, 1999.
12. Paul Keating, Lowitja O'Donoghue Oration, 31 May 2011, Adelaide, Keating also noted that 'After fifteen years' operation of the Native Title Act 1993, there have been 1300 claims lodged, arriving at 121 native title determinations, covering just over 10% of the land mass at a cost to the taxpayer of over $900 million.'
13. Referred to in Tom Calma's Mabo Oration 2009, '"From self-respect comes dignity, and from dignity comes hope": meeting the challenge of social justice for Aboriginal and Torres Strait Islander peoples', viewed 21 June 2011.
14. Eddie Mabo was a member of the Aboriginal Arts Board from 1974 - 1976.
15. Australia Council for the Arts, Annual report 1974 - 75, p. 34.
16. Australia Council for the Arts, Annual Report 1974 - 75, Commonwealth of Australia, 1975. p.33.
17. 'Black Community School Manifesto' © Mabo Family Collection, viewed 15 June 2011.
18. Western Australia v Ward (2000) 170 ALR 159.
19. For a full copy of the Declaration see the Human Rights and Equal Opportunities Commission website, viewed 3 March 2011.
20. Megan Davis, 11th Vincent Lingiari Lecture (Presented at Charles Darwin University, Darwin, 19 August 2010), as cited in Erin Mackay, 'Regulating rights: the case of Indigenous traditional knowledge', Indigenous Law Bulletin,
21. Under section 74 of the Native Title Act, such an application was required.
22. Bulun Bulun v R & T Textiles Pty Ltd (1998) 41 IPR 513.
23. Sally McCausland,'Protecting communal interests in Indigenous artworks after the Bulun Bulun Case', Indigenous Law Bulletin, July 1999, vol 4, issue 22, pp 4 - 6.
24. Western Australia v Ward (2002) 191 ALR 1.
25. Matthew Rimmer 'Blame it on Rio: Biodiversity, Native Title and Traditional Knowledge' (2003) 7 Southern Cross University Law Review 11.
26. WA v Ward, at.31.
27. WA v Ward, at.31.
28. Foster v Mountford (1977) 14 ALR 71.
29. Milpurrurru v Indofurn Pty Ltd (1995) 30 IPR 209 (Carpets Case).
30. Bulun Bulun and Anor v R & T Textiles Pty Ltd [1998] 1082 FCA, p.26.
31. Yumbulul v Reserve Bank of Australia (1991) 21 I.P.R. 481.
32. Michael Kirby, Wentworth Lecture 2010, 'First Australians, Law and the High Court of Australia', viewed 21 May 2011.
33. Justice Kirby (dissent) WA v Ward, p.161-162.
34. According to the Australian Bureau of Statistics, in 2003, the Torres Strait Islander population was 48,791, of whom 86% lived outside the Torres Strait area. Australian Bureau of Statistics, Population characteristics of Aboriginal and Torres Strait Islander Australians: 2001 Census.
35. Robynne Quiggin, Terri Janke and Company (ed), Performing Arts: Protocols for producing Indigenous Australian Performing Arts, Second Edition, Australia Council for the Arts, Sydney, 2007, p. 5.
36. Matthew Rimmer, 'Bangarra Dance Theatre: Copyright Law and Indigenous Culture' [2000] GriffLawRw 19; (2000) 9(2) Griffith Law Review 274.
37. The cultural lullaby was apparently from Afunakwa of the Solomon Islands.
38. Emmanuel Narokobi. 'Sweet Solomon Islands Lullaby' (June 18, 2008), viewed 15 June 2011.
39. Australian Institute of Aboriginal and Torres Strait Islander Studies, Audiovisual Archive Code of Ethics, viewed 15 June 2011.

40. Where the hell is Matt? Blog, viewed 15 June 2011.
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43. Marc Lee, Review: Hidden Treasures of Australian Art, BBC Two, review
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49. James Rouse, 'Kava: A South Pacific Herb for Anxiety, Tension, and Insomnia,' Clinical Nutritional Insights, Vol.6, No.10, 1998, viewed 20 June 2011.
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