# Index

```
Aboriginal and Torres Strait Islanders see also Indigenous communities; Torres Strait
    ancestry and rights to country see Group membership
    discriminatory treatment of property rights 8-9
    implications of Mabo decision 2
    native title goals 3
    self-government rights see Self-government
Aboriginal Councils and Associations Act 1976 (ACA Act)
    provisions 174
    thinking behind 184
Aboriginal Land Rights Act 1983 (NSW) (NSWALRA) see also Statutory land rights
    background 143-4
    claimable Crown lands 148
    governance 145-7
Aboriginal Land Rights (Northern Territory) Act 1976 129, 143, 230, 232, 238 see also
      Statutory land rights
Aboriginal political ontology 190-7
    Our Future in Our Hands 196-7
Aboriginal Social Impact Assessment (ASIA) 165
Akiba case 3, 6-7, 18-19, 23-4, 141
    authorisation of claim groups under NTA 25
    coexistence of native title and common law rights 54-5, 58
    commercial rights, recognition of 3, 7, 29, 32, 34–6, 39, 42–3, 52–3
    conduct of 31
    connection issues 27, 31
    extinguishment issue 33, 37-42, 53-4
    fisheries legislation 32, 39-40, 41
    judicial approach to native title, change in 29-32, 38-40, 42, 75, 98
    laws and customs of Islanders 27
    limited native title rights 31–2, 33
    non-discrimination principles 36
    over-specification of rights 36-7, 42
    overview 32-3
    reciprocity-based rights 33
    resources, rights to 33, 34-6, 52-3
    significance of 34-42
    single Torres Strait society 32, 33
    society requirement 25-7
    trading history of Torres Strait Islanders 34-5, 53
Arena Journal 187, 188, 189
Assimilation 184, 189
```

257

```
Aurora Project 181
Australian legal system
    anti-discrimination law 9
    constraints on native title recognition 5, 6
    implications of Mabo decision 2
    terra nullius and 86
Autonomous Bougainville Government (ABG) 161
'Balkanisation' of native title claim groups 6, 10, 26, 178-80
Banivanua Mar, Tracey 189
Barcham, Manuhuia 195
Bethell, Tom 214
Blackwood, Peter 205, 208
Brigg, Morgan 186-7, 190-2, 195-6
Brown v Board of Education 8, 76
    decision, impact of 94-5
    racial equality 93-4
Brown case 30, 40, 141
'Bundle of rights' concept 6, 27, 30, 50
Cameron, Patsy 193
Canada
    Aboriginal right to self-government 160–2
    inalienability of native title 67-9
    'legitimate purpose', doctrine of 56
    settler state comparisons 4, 8, 10, 30, 55-6, 85, 105
'Caring for Country' 137-8
Case of Tanistry
    tenure, doctrine of 80
Cavanagh, Ed 187, 188
Central Land Council (CLC) 12
    community development approach 12, 229 see also Community development
    land use agreement payments 232
Claudie, David 185-6
Clendinnen, Inga
    Dancing with Strangers 99
'Closing the Gap' 138, 139, 141
Colonisation 8, 30, 44
    discriminatory essence 109
    dispossession 127-9
    historiography of 'elimination' 187-90
    settler-colonial authority 187-8
    settler-colonial liberalism 190-1
    tenure, doctrine of 80-3
```

Press.indb 258 8/05/2015 2:20:54 PM

Community development

Aboriginal capacity and assets 243

Aboriginal engagement, ownership and control 240-1 Aboriginal priorities and government policies 245 adequate resourcing 247 assessment 247-8 bottom-up, participatory approach 242 Central Land Council (CLC) 235 community benefit evaluation 241-2, 245 community complexity 246 Community Development Program (CD Program) 235–6 community development projects 236-9 Community Development Unit (CD Unit) 235 Community Lease Money Project 239 contextual factors influencing potential 243-7 evidence base, building through 242 goal and intended outcomes of CD Program 236 governance structures 243-4 government policy shifts 244-5 Granites Mine Affected Area Aboriginal Corporation (GMAAAC) 238 land use agreement payments 235 new projects 239 Northern Territory Parks Rent Money Community Development Project 239 partnerships 245–6 principles of 235 program monitoring and evaluation, CLC strategy 239-42 realistic timeframes 247 Tanami Dialysis Service 239 Uluru-Kata Tjuta Rent Money Community Development Project (URM) 237-8 Warlpiri Education and Training Trust (WETT) 236-7 Community Lease Money Project 239 Corporate sector Indigenous economic participation and 167-9 Corporate social responsibility (CSR) 167-8 Crown absolute ownership of land 78 dé Ishtar, Zohl 193 de Soto, Hernando see also Land tenure reform; Property rights theories of 11–12, 213–28 Delgamuukw decision 55, 68, 105, 109-10 Discovery, doctrine of 45–6, 64–5 Crown assertion of sovereignty, doctrines behind 45-6 United States 64, 65–7 Discrimination see Non-discrimination principles; Racial discrimination Dispossession 127–9 settler colonialism theory 128 Dodson, Mick 107, 116

259

Doorndjil Yoordaniny Declaration 195

Press.indb 259 8/05/2015 2:20:54 PM

```
Economic potential of native title
    Akiba case 52-5, 58 see also Akiba case
    Canada 55-6
    commercial rights 50-6
    common law property concepts 48-9
    doctrine of discovery 45
    exclusive possession rights, qualifications to 51
    explicit and implicit commercial rights 50-1
    extinguishment doctrine 46, 47-8, 50
    fisheries legislation 53-4
    fragmentation of native title 48-50
    future act process 57-8
    inalienability of native title 46, 50 see also Inalienability of native title
    Indigenous Land Use Agreements 4, 44, 57
    limited value of native title 158 see also Self-government
    management of future economic and commercial activity 57-8
    overview 44-5, 135-42
    perceptions of Aboriginal society 27, 51-2
    pre-contact trading activity 51-3
    proof requirements for native title 48-9
    regulation and extinguishment 53-4
    regulation and prioritisation 54-6
    rights and interests specified in determinations 49-50
    self-government framework, relevance of 158-70
    social services and infrastructure, relevance of 164-7
    Sparrow case 55-6
    Ward case 47
England
    property law development 78-81
    tenure, doctrine of 78-81
Extinguishment doctrine
    Akiba case 33, 37-42, 53-4
    Australian native title law, in 18–19, 32, 47–8, 107–8
    common law principles 31
Fejo v Northern Territory
    extinguishment of title, approach to 18
    traditional law/custom and common law, intersection of 17-18
    transient fee simple 18
Fingleton, James Street 176
Fisheries legislation 7, 32, 39–40, 41, 53–4
Fraser Coalition Government 130, 143
Fraser, Nancy 140, 141
Frith, Angus 176, 178
Gerhardy v Brown
    discrimination law in 113-14, 118
    'formal equality plus special measures' approach 114-15
```

Press.indb 260 8/05/2015 2:20:54 PM

```
Gove Land Rights case
    common law of reputation 16
    'native title' expression 14, 16
    pre-native title judgment 16-17, 103, 129-30
Governance
    Aboriginal values and ideas 190-4
    Community Action Groups 195
    community development and CLC 243-4
    'cultural legitimacy' for collective action 195
    formal incorporation statutes 184
    non-Indigenous and Indigenous, interaction 185, 190-2
    norms of, Indigenous adaption to 186-7
    NSWALRA, under 145-7, 155
    post-NTA governance 173-8
    service delivery 195
Granites Mine Affected Area Aboriginal Corporation (GMAAAC)
    community development project 238
    2014 Planning Cycle 238
Group membership
    adoption and acceptance as holders of traditional rights 201, 202-3, 208-9
    ancestry, knowledge of country and 202-4
    anthropological evidence of association 205-7, 212
    conflict resolution 200-1
    culture, role in conflict 201
    decisions about acceptance or rejection of membership 205-7
    'diaspora people' 204, 207
    impact of disputes on claims 201, 210
    individual's claim to country, acceptance of 204, 205-7
    intra-Indigenous disputes over claim group membership 199-202, 211
    kinship-driven social relationships 201, 203
    legal and anthropological discourse 207-9
    'Minnie' case 202-9
    oral tradition 205
    politics and money in membership negotiations 210-12
    social and political relations among Aboriginal claimants 200-1
    'traditional' and 'historical' land connections 201
    tribal or language affiliations 207, 210
    Waanyi native title claim 202-9
Haddon, AC 23
High Court
    approach to native title 29-31, 42-3
Hollway, Sandy 172
Howard, Colin 172
Howard Government 137, 196
Howard, John 132
Howard-Wagner, Deidre 189
```

Press.indb 261 8/05/2015 2:20:54 PM

```
Hunt, Janet 184-5
Inalienability of native title
    appendance theory 67
    Canada 67-9
    common law and restraint on alienability 60, 64
    consequences of 217-19
    discovery, doctrine of 64-5, 66-7, 71
    historical practice of 69-70
    inalienability in Australia 61-6
    introduction 60-1
    Mabo 61-5, 71-2
    native title groups and third party transactions under NTA 65-6
    New Zealand 70-1
    NTA 65
    origins of doctrine, explanations for 71
    prescribed bodies corporate 65
    property law 60
    proprietary nature of native title 61-2
    purchaser-sided factors 71
    rationale for requirement 71-2
    Royal Proclamation of 1763 (Imp) 66, 67-8, 73-4
    theory of, need for development 72
    United States 64, 65-7, 69-70
    vendor-sided factors 71
Indigenous Advancement Strategy 139, 140
Indigenous communities
    ancestry and rights to country see Group membership
    bargaining power, inequality of 10
    community development see Community development
    conflict resulting from native title determinations 20–1 see also Group membership
    economic development, preferred models for 5
    geographic distribution 134
    incorporation strategy see Indigenous incorporation
    post-native title recognition 10-11
    settler states and, relationship 4-6, 44
Indigenous empowerment
    commercial native title rights and 7, 34-6
    Indigenous native title corporations, through 171
    land ownership 135-8 see also Land tenure reform
    land rights, through see Land use payments; Statutory land rights
    'liberal citizenship frame', within 190
    opposition to Mabo decision 172
    pre-Mabo political context 172
    self-government see Self-government
    settler-colonial society, in 187-8
Indigenous incorporation 10, 11
    Aboriginal Councils and Associations Act 1976 (ACA Act), under 174, 184
    administrative organisation capacity, strengthening 180-3
```

Press.indb 262 8/05/2015 2:20:54 PM

```
Australian law and traditional laws and customs, tensions between 178
    'Balkanisation' problem 178-80
    collective action 184, 195-6
    complexity of legal requirements 171, 175
    corporate support and collaboration 182-3
    Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act), under
        174 - 5
    costs of administrative and reporting tasks 178
    empowerment of Indigenous people 171, 183, 185
    governance and 184-5 see also Governance
    ILUAs, administration of 180
    Indigenous culture and values, use of 193-4
    introduction 171-2
    local control 181-2
    Mabo decision, initial response to 172-3
    Native Title Representative Bodies (NTRB) 177
    not-for-profit corporations 186-7
    NTA administrative organisation 171, 173
    overseas historical experience 182
    overview 184-7, 197-8
    philanthropy and 182-3
    post-NTA governance 173-8
    prescribed bodies corporate (PBCs) 175-8
    private sector and 180-3
    statutes of 184-5, 193-4
    structures, scale of 194-5
Indigenous Land Fund 116
Indigenous land ownership
    biodiversity and conservation 137-8
    'Caring for Country' 137-8
    categories of place 135
    'Closing the Gap' 138, 139, 141
    colonial justification for dispossession 127-8
    compensatory land rights regimes 126
    data collection strategy 133
    data gap 132-3
    data sources 142
    development options 135-8
    dispossession in settler-colonial period 127-9
    economic development issues 135-8
    environmental value 137-8
    exclusive possession 129, 134, 136
    extent and estimated resident population of Indigenous-held lands, table 135
    fear campaigns 132
    forms of native title 131
    geographic distribution of Indigenous communities 134-5
    Gove Land Rights case 129-30
    heterogeneity in rights and interests 134
    judicial decisions, recent 141
```

263

```
Indigenous land ownership (cont)
    land justice 140-1
    land rights legislation 129-30, 150
    land tenure, forms of 133-4
    landholdings, extent and location of 132-5
    Mabo decision 130
    mapping, use of 132
    mining 136-7
    native title case law 130-1
    native title legislation 130
    neoliberal restructuring 138-40
    opposition to native title claims 141
    overview 126-7
    pastoral leases 128-9
    reform, need for 213 see also Land tenure reform
    registered native title claims 126, 134, 136
    remoteness 136
    repossession 129-32
    repressive authenticity and 131-2, 139
    settler colonialism theory 128
    spatial data 133
    value of 135-8
Indigenous Land Use Agreements (ILUAs) 4, 44, 57, 230-2, 247-8 see also Land use
      payments
    administration of 180
    Kalkadoon Constitution Indigenous Land Use Agreement 156-7
    Noongar people 249
Indigenous Protected Areas program 137
Kalkadoon Constitution Indigenous Land Use Agreement 156
Kapululangu Aboriginal Women's Law and Culture Centre 193
Karpany case 30, 41, 141
Keane, Chief Justice Patrick 44, 57-8
Keane, Maurie 144
Keating, Paul 95, 173
Land and Environment Court (NSW) 148-9, 150
Land law theories 8
Land rights 2
    fairness and equal treatment, concepts of 8
    prior to native title recognition 9
    statutory see Statutory land rights
Land tenure reform
    alienability, benefits and risks of 217-19, 223-5
    assessment of de Soto's theories 227-8
    'asset' or 'marketability-based' approach to 219
    capital, role and significance of 221
    collateralisation 217-19
    collective and individual ownership 225-6
```

Press.indb 264 8/05/2015 2:20:55 PM

```
criticisms and limitations of de Soto's theories 216-21
    de Soto's theories on property rights 214-21
    formal, integrated and alienable property rights 214-15, 216-17, 223-5
    formal legal system, role of 216
    formal recognition of native title, de Soto and processes for 222-3
    formalisation and transfer of ownership 220
    informal land markets 215, 220
    introduction 213-14
    native title holders and occupiers, relationship 226–7
    native title law, relevance of de Soto's theories 221-7
    occupiers and landowners, relationship 220
    ownership of native title 223-6
    people's law, discovering 215-16
    'social contract' and formal legal system 215-16
    statutory land rights 224-5
    tension between informal systems and formal legal system 216-17
Land use payments 12
    Central Land Council (CLC) 232, 235-42
    community development 229, 233-5, 247-8 see also Community development
    Community Development Agreements (CDAs) 230
    empowerment and 229, 230, 234-5, 247-8
    Indigenous Land Use Agreements (ILUAs) discussion paper 231
    Indigenous people and mining 229-32
    levels of empowerment 230
    mining, relating to 229-32
    service delivery and 233
    unequal bargaining power 230
    variability of benefits 231
Larrakia (Darwin) case 23
Law of nations 45
Levitus, Robert 184, 197
Litigation
    Akiba case see Akiba case
    disputes about claim group membership see Group membership
    empowerment through 4, 20, 29
    key test cases 29-30, 31
    NSWALRA, under 149
    use of 9, 20
Local Aboriginal Land Councils (LALCs) 9
    Chief Executive Officer 145
    economic empowerment and 151-5
    functions 145-6
    land dealings by 147
London Missionary Society 23, 24
Lovell, Melissa 189
Mabo (No 1)
    racial discrimination finding 110-11, 112
```

Press.indb 265 8/05/2015 2:20:55 PM

```
Mabo (No 2) decision
    Brown v Board of Education, comparison of effect 94-5
    dissenting judgment 102-3
    doctrine, facts and narrative in 83-8
    equality and non-discrimination principles 100-3
    historical reconstruction 86-7
    hopes and expectations raised by 2, 13, 29, 93
    implications of 2, 29, 46
    inalienability see Inalienability of native title
    influence of 93-8
    iustice 95-6
    land law focus 87
    legalistic response 3-4
    'political' decision 89, 95
    popular consciousness and social change, role in 93-6
    property law, impact on 75–7
    Redfern speech 95
    terra nullius 83, 84-7
McHugh, Paul
    Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights 180
Macklin, Jenny 138, 231
Macoun, Alissa 189
Maddison, Sarah 186-7
Malo's law 24
Martin, David 205-6, 207, 208, 210
The Masks of Mer 23
Milirrpum v Nabalco see Gove Land Rights case
Miller, Linn 193
Mining 136-7, 153, 163-4, 167-9, 229-32, 238
Moreton-Robinson, Aileen 186, 187
Morphy, Frances 190-1
Mundine, Mick 187
Murdi Paaki Regional Authority (MPRA) 194-5
Murphy, Lyndon 190–1, 192
The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else
     213 see also Land tenure reform
National Indigenous Reform Agreement 139-40
National Native Title Tribunal 175
National Reserve System 137, 138
Native title
    alienation outside landholding group 7-8
    claims see Native title claims
    commercial right, recognition of 3, 7 see also Akiba case; Economic potential of
```

Press.indb 266 8/05/2015 2:20:55 PM

native title

```
critique of operation in Australia 6, 11-12
    de Soto's theories, relevance to law of 221-7
    definition 48
    delivery, disappointment in 3
    determinations, granularity of 20-1
    development since 1992 3
    economic potential see Economic potential of native title
    expert evidence, use of 27-8
    expression, use of 14
    extinguishment of 8, 18-19, 31, 37-42 see also Extinguishment doctrine
    fisheries legislation and 7, 32, 39-40, 41, 53-4
    flexibility, need for 28
    fragmentation of 48-50, 54
    fundamental difficulty of 21-2
    governments' control of 3
    inalienability of see Inalienability of native title
    interactions between state and communities 3
    legal right, institutionalising negotiation of 20
    legal shortcomings of system 3-4, 14-22, 30-1
    legislative impacts on, construction of 54
    mediation bias 6, 20
    nature of 104-7
    opposition to 97, 141, 172
    positive change and empowerment 3
    pre-sovereignty premise of 15
    property concepts 17, 48-9
    property right, as 8
    racial discrimination and see Racial discrimination
    recognition and self-government implications 4–5, 10
    requirement for unbroken connection with land 15-16, 18, 26-7, 30, 31, 91
    support for 96
    suspension effect 18–19
    third party/development interests 5
    value as basis for Aboriginal economic participation 158-9
Native Title Act 1993 (NTA)
    administration of regime 171
    amendments to 8-9, 25, 119-21
    evidentiary battles 16
    legal shortcomings of 3-4, 14-22, 27, 30, 164
    Mabo decision, following 2, 95
    non-extinguishment principle 38
    prescribed bodies corporate (PBC) provisions 58, 65
    proof of identity under 15-16
    requirement for unbroken connection with land 15-16, 18, 26-7
Native Title Act case 55, 108-9
    racial discrimination and 111, 117
Native Title Amendment Bill 2012 57
Native Title Amendment (Reform) Bill 2011 59
```

Press indb 267

8/05/2015 2:20:55 PM

```
Native Title Bill 1993 176
Native title claims
    'Balkanising' claim groups 6, 10, 26, 178-80
    'bundle of rights' concept 6, 27, 97
    group members and conflict see Group membership
    participation, authority for 6, 25
    registered, number of 126, 134
Native Title Conference 2011 44, 58
Native title representative bodies see also Indigenous incorporation; Prescribed bodies
     corporate
    administration of NTA matters 177
    compliance requirements, costs of 10-11
    disputes within claimant groups 201
    statutory land rights regimes and 149-50
Negotiation
    claim group members and conflict see Group membership
    consent determinations 51
    mode of engagement 4, 20-1
    Noongar native title settlement 249–56 see also Noongar native title settlement
    shortcomings of native title system 249-50
Neoliberalism 138-40
New South Wales
    land rights regime 9-10, 143-57 see also Statutory land rights
New South Wales Aboriginal Land Council (NSWALC) 145-6
    advocacy role 146
    economic empowerment through statutory land rights 151-5
    Education Endowment Fund 152
    LALCs and 146-7, 154-5
    mining and exploration industry 153
    NSWALC Account 150-1
New Zealand
    inalienability, historical practice of 70-1
    settler state comparisons 4, 8
    Treaty of Waitangi Settlement process 4
Non-discrimination principles 8, 36 see also Racial discrimination
Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014
     (Draft) 250
Noongar native title settlement 5-6, 12-13, 23, 26, 195
    access to Crown lands 251
    acknowledgement of past and serving the future 253
    community development 252
    economic participation 251-2
    funding streams of settlement 251
    joint management, heritage and governance 251
    just, equitable and sustainable settlement 253
    Land Base strategy 251
```

Press.indb 268 8/05/2015 2:20:55 PM

litigation, views on 253-4 nation-based approach 254 native title system shortcomings 249-50, 253-5 political empowerment 255-6 principles, fundamental 253 recognition requirement 250-1 self-determination 250, 252-3, 255 settlement features 250-2 Northern Territory Emergency Response 189, 233, 239 Northern Territory Parks Rent Money Community Development Project 239 Office of the Registrar of Indigenous Corporations 193 Oscar, June 194 Our Future in Our Hands 196-7 Pastoral leases 19, 42, 128-9 Pearson, Noel 107-8 Pedersen, Howard 194 Pitts, Angela 187 Policy and administration 'Closing the Gap' 138, 139, 141 collective action, encouragement of 184 formal incorporation statutes and governance 184 Indigenous empowerment and 4 policy cycles 166, 244-5 public policy critique 187 social outcomes, failure to improve 166 Povinelli, Elizabeth 139 Prescribed bodies corporate (PBCs) 65, 175-8 functions under NTA 58, 65, 176-7 native title management, challenges 176–7 registration with National Native Title Tribunal 175 vulnerability 177 Property law alienability 60 colonisation and doctrine of tenure 80-3 compensation for unjust expropriation 91-2 concept of property 60-1 definition 75-6 doctrinal revision 76 doctrine and narrative in common law native title 77-8 doctrine, facts and narrative in Mabo 83-8 dualistic structure post-Mabo 90-2 English foundation of 78-81 equality principle 90 inclusive post-colonial nationalism 88-93 judicial atonement 92 land and property rights, origins of 77-8

Press.indb 269 8/05/2015 2:20:55 PM

```
Property law (cont)
    Mabo decision, influence of 75-7, 93-8
    'normative universe' approach 76, 89-90
    'politics of recognition' in Mabo 89-90
    pre-Mabo 83-4, 91-2
    'proprietary paradigm' 87, 97
    rights over land through Indigenous tradition and custom 90-1
    tenure, doctrine of 78-83, 87-8
    terra nullius 83, 84-7
Property rights
    analysis 8
    de Soto's theories 214-16
    discriminatory treatment 8-9
    Indigenous, concept of 30
    land tenure reform see Land tenure reform
    Lockean theory 128
    origins of 77
Queensland Goss Labor Government 172
R v Sparrow 55-6
Racial discrimination
    access to land and race 113-15
    amendments to NTA 119-21
    anti-discrimination legislation 103-4
    classic rights critique 121-2
    continuity test 105
    dispossession injustice 109
    dissenting judgment in Mabo 102-3
    equality, definition of 99-100
    evidentiary burden on claimants 105
    extinguishment of native title 104, 107-8, 109, 119-21
    failure to recognise native title as injustice 100-1
    'formal equality plus special measures' approach 113-15
    Gove Land Rights case 103-4
    inherent rights of Indigenous peoples 123-4
    legislative prohibition in native title cases 110-11
    limited recognition of rights 106
    Mabo and equality and non-discrimination principles 100–3
    native title and, overview 99
    nature of native title and discrimination 104-7
    non-discrimination 36, 100, 121-2
    non-Indigenous people, against 112-13, 118
    NTA and discrimination 116-17
    possessory title approach 105-6, 109
    pre-Mabo discrimination 108-9
    Racial Discrimination Act (RDA) and protection of native title 110–14, 116, 118,
         122 - 3, 173
    re-examination of common law in Mabo 100-1
    remedies for 109-10
```

Press.indb 270 8/05/2015 2:20:55 PM

special measures in legislation 113-16, 117-19 traditional laws and customs requirements 104-7 Wik and NTA amendments 119-21 Racial Discrimination Act 1975 (RDA) use in native title cases 110-14, 122-3 Redfern Aboriginal Housing Company (AHC) 187 Rigney, Lester-Irabinna 192-3 Rose, Deborah Bird 128 Royal Proclamation of 1763 (Imp) 161 inalienability of native title and 66, 67-8 Indian land provisions 73-4 Rudd, Kevin 172 Self-determination historiography of 'elimination' 187-90, 196 Noongar people 250, 252-3 Self-government Aboriginal economic participation and, overview 158-9, 169-70 autonomy within Australia state 169 Canada and Australia comparisons 160-2, 169 corporate sector relationship 159, 160-1, 167-9, 170 definition 159 economic participation rights 162-4 education and health outcomes 165 governance and institutional capacity, building 169 implication through recognition of native title 4-5, 10 native title and 159-62, 170 Papua New Guinea 161 policy cycles 166 political agenda 167 rights to 4, 170 social services and infrastructure, provision of 164-5 stability of policy, benefits from 166-7 strategic approach to business opportunities 169 Smith, Diane 184-5 Social Effects of Native Title: Recognition, Translation, Coexistence 185-6 South West Aboriginal Land and Sea Council (SWALSC) 12, 195, 249 Noongar native title settlement 249-56 see also Noongar native title settlement shortcomings of native title system 249-50 Stanner, Bill 141 Statutory land councils 173 see also Indigenous incorporation; Statutory land rights Statutory land rights Aboriginal Land Rights Act 1983 (NSW) (NSWALRA) 133, 143-50 Aboriginal Land Rights (Northern Territory) Act 1976 129-30, 230, 232, 238 appeals relating to claims 148-9, 150 assessment of 155-7 claimable Crown lands 148

Press.indb 271 8/05/2015 2:20:55 PM

```
Statutory land rights (cont)
    claims, number of 149
    community development levy 155
    development models 154
    economic empowerment 151-5, 233-48
    governance under NSWALRA 145-7, 155
    land council system funding base 150-1
    mainstream form of ownership 224-5
    mapping and quantification of outcomes 132-5
    native title and, comparison 155-7, 230, 232
    NSWALC Account 150-1
    overview 143
    partial grants 149
    refusal of claims 148-9
    rights, other, under NSWALRA 150
    State planning controls 153
    strategies for economic development 153, 229-48
Strakosch, Elizabeth 189
Tanami Dialysis Service 239
Tenure, doctrine of
    colonial North America 81-3
    colonisation and 79-81, 87
    English foundation of 78-9
    Mabo 87-8
Terra nullius 8, 83, 84-7, 101, 129, 130, 143
Torres Strait Islands
    Akiba case see Akiba case
    Cambridge University anthropological study 23
    distinctiveness of communities 24
    evidence of Islanders 24-5
    single society assertion 32
    trading history of Torres Strait Islanders 34–5
Torres Strait Regional Sea Claim see Akiba case
Uluru-Kata Tjuta Rent Money Community Development Project (URM) 237-8
United States
    appendance theory 67
    colonial North America and doctrine of tenure 81-3
    inalienability, historical practice of 69-70
    Indian title 8, 64, 65-7
Unsettling the Settler State 186-7, 193
Veracini, Lorenzo 187, 189
Waanyi native title claim 11, 20, 21
    ancestry, knowledge of country and social inclusion 202-4
    decisions about acceptance or rejection of group membership 205-7
    legal and anthropological discourses on membership 207-9
```

Press\_Index.indd 272 8/05/2015 5:16:51 PM

Walker, Frank 144

Ward case 7, 29, 30, 109, 112–13, 123 extinguishment test case 38, 42, 47 operation of *RDA* 111

Warlpiri Education and Training Trust (WETT) community development project 236–7 structure of 237

Western Cape Communities Co-existence Agreement 181

Whitlam government 129, 130, 143

Wik case 2, 18, 19–20, 47, 86, 98 pastoral leases 19, 119 tenure, doctrine of 81 waste lands legislation 19

Wilson v Anderson 29

Wolfe, Patrick 128, 131, 139, 187, 188 'elimination' theory 188–9

Woodward Royal Commission 144

Wran, Neville 144

Yanner v Eaton 17, 39-40, 51, 53

Yarmirr case 29, 34, 51, 52

*Yorta Yorta* case 6, 7, 25, 26, 27, 29 continuity test 27, 30, 31, 49, 105