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EDDIE KOIKI MABO

LECTURE SERIES

A Mabo Oration (2022)

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James Cook University (JCU) celebrates the history-making Mabo decision with the long established **Eddie Koiki Mabo Lecture Series**, an annual public commemorative presentation by a prominent person who has made a significant contribution to contemporary Australian society.

JCU Library has collaborated with the JCU Indigenous Education and Research Centre to archive and present the Lecture Series via the online repository for the Special Collections - NQHeritage@JCU making it available for future researchers and all Australians.

Mabo Oration

Respects to country

Respect to Mabo family.

Condolences the late Chief Justice Sir Gerard Brennan.

I like poetry. I like words.

Tonight I want to begin by quoting the words of the late Justice Brennan. The words he wrote in his lead judgment in the Mabo case.

“The common law itself took from indigenous inhabitants any right to occupy their traditional land, exposed them to deprivation of the religious, cultural and economic sustenance which the land provides, vested the land effectively in the control of the imperial authorities without any right to compensation and made the indigenous inhabitants intruders in their own homes and mendicants for a place to live. Judged by any civilized standard, such a law is unjust…”

I like the way words fall off our tongues.

“Judged by any civilised standard, such a law is unjust.”

I like the way words spoken together, carefully chosen to sit alongside each other just the right length, the right tone, each one setting up the other – chosen for both meaning and music – I like how they create a rhythm.

They can raise us to anger…then soothe us. Love, kindness, forgiveness, love…sorrow, rage, justice, peace, love…love.

Above all love. For what are we without it.

Words spoken with weight and intent – words that can blow down mountains.

“I have a dream.”

The reverend Martin Luther King junior knew how to speak. He knew what words meant.

“I have been to the mountain top and I have seen the glory of the coming of the lord. I may not get there with you but we as a people will get to the promised land.”

How those words spoke to African Americans living under the boot of a racist America that would not see the god given dignity of their fellow human beings.

How America failed its own creed that all are created equal.

King spoke to hope. Even when he realised that hope itself spoke against a reality of hopelessness.

And still his people hope and still they journey to the promised land and still his words speak today.

They spoke to me.

A little boy raised in the black churches of the missions that my family came from in New South Wales.

My uncles preached as Martin Luther King preached. They preached to the church of the forsaken.

The church of the crucified Christ – who in his moment of death cried out “my god why hast thou forsaken me.”

Eddie Mabo had a strong faith. Let’s remember too his co-plaintiff Father David Passi.

Eddie Mabo and David Passi, they knew what it was to be forsaken and yet find hope in that forsakenness.

The French philosopher, Simone Weil, spoke of the afflicted. Afflicted – to be abandoned. She said the afflicted lived the crucifixion.

“A kind of horror submerges the whole soul”, she wrote.

In that darkness, “the soul ceases to love.” But love itself lives on in the emptiness. We go on wanting to love.

She said in our affliction we know truth. We are the only ones who know truth.

In our abandonment we lost all but love. Love – even just the wanting of love – held us together and our love leads us home.

Love. That word love.

Martin Luther King knew about love.

“We still love you. Send your hooded perpetrators of violence into our communities and at the midnight hours and drag us out to dome wayside road and beat us and leave us dead and we will still love you. But be assured we wear you down, by our capacity to suffer.”

Eddie Mabo knew about love too. He knew about suffering. He knew about hope and he knew about justice. And he knew truth.

The truth: this was his land. This is our land. This will always be our land.

Truth.

And he was right. And as much as Australia’s law tried to tell him he was wrong. He knew his law and he knew that even the law of Britain that had stolen this land had to admit – finally admit – what we knew, what Eddie Mabo knew.

This was not empty land. This was our land.

Truth.

Words.

Words – the right words – words that speak truth – those words speak to our souls.

Words like those of the novelist James Baldwin.

“To be a negro in this country and to be relatively conscious is to be in a state of rage almost, almost all of the time —.”

Oh how we know rage. Yes we do.

We know the rage that comes from history. A hard history.

Words.

The great Irish writer James Joyce knew the weight of history.

“History is a nightmare from which we are trying to awake.”

Words. I like words. Words speak across tongues. Across language itself.

Words like Han. Han is Korean. It is more than a word. It is a feeling. It is lament. It is sadness beyond the word sadness itself.

Han.

Our people know Han. We know sadness. Our land speaks sings gently a song of sadness. I have heard it at dawn as the earth crackles, the river waters run, and the animals stir as the sun peers above the hills and the light strikes the trees on my beloved Wiradjuri country.

Land remembers.

Korea is a land that I have visited. A land I have reported from. A land divided. A border runs like a scar between the two Koreas – north and south – a border drawn in blood.

Korea is a blood-soaked land. A land still not at peace. Still at war.

And a people who carry deep the memory and wounds of war.

Wounds. The memory of wounds. The great polish poet, Czeslaw Milosz, said perhaps all memory is the memory of wounds.

Milosz. Wrote into the horror of the twentieth century as he saw war all around him.

He spoke of impermanence. He knew things did not last…and yet…and yet we do. We go on he said – ever ever ever on.

We cross rivers and we are changed. Like the water itself. We cannot cross the same stream twice.

Words. Listen to Milosz.

, "the golden house of is collapses. A world turning. A culture and a people facing devastation. The golden house of is collapses and the world of becoming ascends."

The golden house of is collapses and the world of becoming ascends."

Think about that…about certainty and the end of certainty. About the crushing inevitability of change. Of progress. What we call progress. As if progress itself is part of nature.

As if everything must be swept away to create anew. Like a tsunami. Our people know that. We know how the world can wash over you.

And a world of becoming ascends.

The golden house of is…of culture and connection of blood and dreaming of time immemorial – how the golden house of is collapses.

Of invasion – of the gun and disease – of law. British law under a British flag.

A law that did not see us.

Words. Words like terra nullius – empty land.

The fall of the golden house of is – but not the end.

We did not end. The world of becoming ascends.

Certainty – being – gone; and ahead, possibility and change: inevitable, unrelenting change. As Milosz writes: ‘you without beginning, you always between…the anti-thesis ripening toward a thesis.’

Milosz was not in fact polish but Lithuanian – yet in his words a ‘Lithuanian for whom it was not meant to be a Lithuanian’. His people had many centuries earlier stopped speaking their language; dominated and fought over by foreign powers. He wrote of his lament for words unspoken in ‘my faithful mother tongue’:

> ‘Faithful mother tongue,
>
> I have been serving you.
>
> Every night, I used to set before you little bowls of colours

So you could have your birch, your cricket, your finch

As preserved in my memory….

Faithful mother tongue,

Perhaps after all it's I who must try to save you.

So I will continue to set before you little bowls of colours

Bright and pure if possible,

For what is needed in misfortune is a little order and beauty.'

Balladhu Wiradjuri Gibir. Dyrrimadalinya Badhu Wiradjuri. I am a Wiradjuri Man – proudly Wiradjuri - my words my language.

Faithful mother tongue that a nation tried to silence but how we laid out our little bowl of colours and how people like my father kept it alive preserved in memory.

Now spoken again…to bring order to bring beauty.

Milosz wrote in polish and French and English the thoughts he could not express in Lithuanian. His work was of the darkness of 20th century Europe awash in blood where memory was indeed 'the memory of wounds.' as he wrote.

‘you got used to new wet winters,

To a villa where the blood of the German owner

Was washed from the wall, and he never returned.

I too accepted but what was possible, cities and countries.

One cannot step twice into the same lake

On rotting alder leaves,

breaking a narrow sunstreak.’

How many wet winters have passed for us? How we have had to accept what is possible.

To cross a river into a new world yet carry still the truth of who we are – the truth of justice.

Everywhere, throughout time: the golden house of is collapses. Being is becoming. Time measured in history – awash with blood. This space between us.

Words. Words like Australia.

Just a word. A word with no meaning but the meaning we bring.

A word that sought to erase other words – Wiradjuri, Kamilaroi, Dharrawal, Kalkadoon, Warlpiri, - hundreds of words spoken to tell the world who we are.

Words: indigenous, aboriginal, islander, first nations. Words that fall short. Words that reduce.

Australia.

What is this thing Australia? This thing called a nation – nations as Benedict Anderson told us – are imagined communities.

Historian Sarah Maddison says Australia exists more in the hearts and minds of its citizens than in any constitution or parliament.

Aileen Morton Robinson says that word Australia. That nation speaks to white possession. Australia is a white invention.

Writer David Tacey says when he lived in central Australia he was referred to not as an Australian but as a European – no one he said was classified as Australian it was an identity yet to come into being.

Words: I honour my god, I serve my queen, I salute the flag.

I had to recite those words – the oath as it was known – each morning at school assembly.

Even then as a boy of six or seven I knew those words did not speak to me.

Yes I knew God. But the flag and the queen felt foreign.

How could I give full voice to that oath when I would return home to where that flag and the crown had deposited us - to the margins to the fringes.

That oath was for Australians. I did not feel Australian.

When I was a boy Australia was for other people.

My people paid the ultimate price for this place we now called Australia.

The Wiradjuri had fought the British after the crossing of the blue mountains. In the 1820's martial law was declared on my people - it was a vicious time. Wiradjuri people would be baited with food laced with poison - others rounded up or herded to their deaths.

Words: in the words of one of the invaders to Wiradjuri land. “The best thing that could be done, would be to shoot all the blacks and manure the ground with their carcases, which is all the good they were fit for.”

Time does not soften those words. Two centuries does not make them any easier to say.

In a country that has too often closed its ears to truth we have to reveal our pain just to be heard.

I grew up with the stories of my Wiradjuri forebears.

How the great Wiradjuri leader Windradyne (a man whose name should be as known to us as sitting bull, crazy horse and Geronimo are known to Americans) led his people on a trek across the mountains to Parramatta in Sydney to meet with Governor Brisbane.

It was reported that Windradyne wore a straw hat and on the brim he had written the word 'peace'.

Peace.

People do not fight and die for an 'empty land' - a people with no rights do not seek 'peace'. The governor does not meet with a people who are considered legally to be invisible.

Australian law could not find the words to speak to our truth. It hid behind a fiction. The fiction I was told at school where I was asked to repeat that oath of allegiance.

The fiction – the lie – that this was a 'settlement' when we knew it was a conquest.

Words. Words matter.

Australian law for two centuries hid the truth behind words.

To seek justice we had to speak the words of British law.

Court cases in the mid-19th century challenged the idea of British settlement - at the time the rulings were in favour of the crown - British law was the law of the colony and usurped and superseded aboriginal law.

Other cases persisted - in one the presiding judge said the mere introduction of British law did not extinguish aboriginal customary law - Justice Willis said 'in Australia it is the colonists not the aborigines who are the foreigners'.

These legal challenges continued into the 20th century - rulings maintained the legitimacy of the crown but could not extinguish completely the aboriginal claims.

Justice Blackburn ruled Australia was indeed a 'settled colony' that this was a ‘desert and uncultivated’, but he had to find words to speak a deeper truth that – even as he upheld the myth of terra nullius - aboriginal people had he said, a ‘subtle and elaborate system of law’

'If ever a system could be called a government of laws – he said - …it is shown in the evidence before me'.

In 1979, Wiradjuri man and law student, Paul Coe, walked the path that Eddie Mabo would follow – all the way to the high court.

He sought to defend what Windradyne knew. What Windradyne had fought for. That this was our land.

Paul Coe came too soon. The court dismissed his challenge to Australian sovereignty, but in a minority opinion Justice Lionel Murphy rattled the bones of the Australian settlement.

> "…the aborigines did not give up their lands peacefully; they were killed or removed forcibly from the lands by United Kingdom forces or the European colonists in what amounted to attempted (and in Tasmania almost complete) genocide."

Words. Powerful words.

A decade later, I was a young reporter still in my early twenties finding my way into the foreign world of journalism, when I saw a listing for a case at the high court.

Mabo v Queensland. Few Australians then knew the name Eddie Mabo.

I had read about the case as it moved through the lower courts. I first came across the case in a chapter in a book written by one of Eddie Mabo's legal team, Brian Keon-Cohen who is here tonight and Brian we honour your work.

Eddie Mabo was rejected at each turn. But he did not give up.

I was no lawyer but I knew – I sensed – this was different. There was something of destiny in the air.

It felt in this case that the time had come.

Words. I walked into the news meeting at the ABC with words. This case I said – this man Mabo – will change Australia.

No one believed me. No one then questioned the idea of Australia. It was settled. The law was the law.

There was scepticism even cynicism but I got to report the story. You can find it still somewhere buried in the archives of ABC news.

How this case may shatter the myth of terra nullius.

This was the case that would overturn the very foundation of Australia.

In 1992 the high court handed down its historic ruling.

Eddie Mabo would not live to see his final victory – but in that judgment he became immortal. Eternal.

Words.

The justices spoke of a legacy of “unutterable shame”…that the dispossession of indigenous people was the darkest aspect of Australia’s history and the nation remained diminished.

Anthropologist Elizabeth Povinelli has pointed out in her book “the cunning of recognition”: “the high court argued not only that the common law could not tolerate the racist foundations of terra nullius, but also that law and liberal democratic states were shamed by the continued adherence to what court called the “barbarian theory” underpinning the colonial reception of the common law of England”.

What an extraordinary thing that a common law that could extinguish indigenous rights to land – underpin dispossession – could also carry the seed of justice.

As Elizabeth Povinelli says the “high court and its supporters constructed their legal act as a journey to the promised land”.

Here we are 30 years later still on that journey.

Words.

We are still trying to find the words to equal the full measure of Eddie Mabo’s devotion.

The justices of the high court sought to erase the nation's great shame and acknowledge what is now known as *native title*.

Yes, it made history. There has been no more profound judgment in Australian law.

But even in that moment when the most learned minds of Australian law acknowledged a great shame…the court stopped short.

Terra nullius was no more the principle that Australia was 'peacefully annexed' remained; the court would not – quote - 'fracture the skeleton' of our law.

Native title existed because British law – now Australian law - could now see it. Native title itself fell to the soil with the planting of the British flag.

But first nations sovereignty. That was beyond the court.

Words. Even in finding the words to acknowledge the truth of Eddie Mabo's claim for justice. The court would not "fracture the skeleton" of Australian law.

Words. Sovereignty.

That word is emblazoned still at the tent embassy on the lawns of the old parliament house in Canberra.

It remains a collection of canvas and tin, but it has grown in those years since a handful of young aboriginal activists planted a beach umbrella and wrote the word ‘embassy’ on a manila folder to shake a fist at the power on the hill.

Today in the midst of winter there is still smoke from a campfire, framing a word spelled out on the lawn 'sovereignty'.

For 50 years this embassy has stood as a reminder that we are still here - that this was and always will be our land.

Sovereignty never ceded.

The embassy grew out of frustration. In 1972 it was five years since Australia had voted to give the first people of this country a 'fair go'. The referendum remains the most successful in Australian history - more than 90 percent of Australians voted yes to count aboriginal people among the population of this country.

It also amended the constitution to give the federal government the power to make laws for indigenous people.

Words: as the slogan at time said - vote yes for aborigines they want to be Australians too.

But by 1972 a young generation of black activists reminded this country that they did not feel like Australians - they were aliens in their own land. Half a century later the demands of Aboriginal and Torres Strait Islander people - demand for

recognition of sovereignty of treaties - remains unfulfilled and so the embassy still stands.

And tonight, as we mark thirty years since the Mabo decision lets pay our respect and send our gratitude to those who keep that embassy alive. Who don't lose heart. How keep speaking truth.

They are there in all weather for all time. I am aware that they do more by their presence than my words ever could.

To those at the front line I want to say thank you.

Native title we know does not speak to sovereignty. We are in many respects captured by native title even as Eddie Mabo sought to set us free.

The cunning of recognition indeed. To quote Elizabeth Povinelli again, the Mabo judgment posed a new question: "would it liberate the present from that evil or create new problems?'

Native title asks us to prove who we are all over again.

To successfully prosecute a native title claim we must prove uninterrupted links to place and culture.

Words. The high court stated that aboriginal traditions could change and adapt to new circumstances but that they had to embody and perform the ideal of "tradition" and "locality".

It also stated that “if aboriginal culture interbred with another heritage…it forfeited these rights”.

For those who bore the first and full impact of invasion. Whose people died from violence and disease who were rounded up, dispersed and segregated.

For those who were stolen from their families.

How do they prove and unbroken link? It can feel like a second dispossession. A second theft.

It can hurt. It can divide families.

Words. Australia can be cruel. And the law can be cruel. The cruellest of words uttered to the Yorta Yorta people that their rights are ‘washed away on the tides of history.”

Words: I think of our poet Ellen Van Neerven who speaks to loss and memory and what a nation can do to a people.

‘If I didn’t know my grandmother, then how could I know myself.’

How many of our people never knew their grandmothers or grandfathers or to know their lands and its legacy. And how they are still cast adrift by our laws today.

While we celebrate the legacy of Eddie Mabo. Our people know there is much to do to reform native title to deliver the full promise of justice.

Terra nullius is gone from our law but it remains Australia's unfinished business.

Terra nullius haunts Australia still. There's a feeling in our souls that we don't quite belong, what has been called *'the whispering in our hearts'*. We live, squeezed into the cities, clinging to the coast. We love the outback, but we don't trust it. Sociologist, Elspeth Tilley, calls it the 'disruptive, disturbing, chaotic, space': a place of 'white vanishing'.

Our poets, our writers, our film makers all grapple with that question of belonging. The land is the central character in this national drama: *picnic at hanging, the chant of Jimmie Blacksmith, wake in fright, sweet country* – all films that emerge from the vanishing place.

In her epic novel of the 1940's, *the timeless land,* Eleanor Dark, imagines the first governor, Arthur Phillip, wondering if this harsh country would ever accept the foreigners: 'as aliens they had come to it, and as aliens they would die in it'.

Tim Winton, his writing inseparable from his landscape, says this country 'leans in on you. It weighs down hard'.

Our writers know that the European presence here is disturbed, unable to break free of the act of invasion and dispossession. It is rattled by the myth of *terra nullius.* Australian scholar, David Tacey, sees Australia as immature, inauthentic. The land is ancient and powerful, he says. The spirit of place is 'social and geopolitical'.

Ken Gelder and Jane Jacobs have called this ‘uncanny Australia’. Home is turned upside down, into ‘something else, something less familiar and less settled’. Australians they say inhabit some Freudian space being ‘at the same time in place and out of place’.

Words: nations are songs. They are stories. They are more than laws.

A law without a story – without lore - is no law at all.

Eddie Mabo gave story to law.

Words. Story.

From that young reporter who covered the Mabo high court hearing – I have gone out to tell the stories of our world.

We cannot separate the Mabo case from its time and its place in world history.

The world was turning.

The berlin wall came down in 1989. In 1991 the soviet flag was lowered over Red Square in Moscow.

The Soviet Union was no more. The cold war had ended.

Words. A young American political scientist, Francis Fukuyama, coined a phrase “the end of history.” This was he says the end of humanity’s great struggle.

Liberal democracy had won. Communism was vanquished.

In a moment…all that had gone before was swept away. Colonisation, empire, genocide, slavery…it was all a precursor to the triumph of democracy.

We were he said no matter where we came from all on a journey to the same destination.

But history does not die so easily. In that same year the berlin wall came down, the people’s liberation army opened fire on their own people in Tiananmen Square.

The last three decades have seen war. Terrorism. Old enmities and historical grievances setting the world ablaze.

Now as I speak Russia’s army is laying siege to Ukraine.

Wars of identity.

Memories of wounds. And people suffering today who will remember tomorrow.

I have reported from more than 80 countries across the decades. I have covered the big stories of our time, seeing the big shifts of history and how that history impacted on the lives of people. How people's lives were formed by those

big historical forces. I was able to witness up close what Pope Francis calls the third world war – it has already spanned Afghanistan and Iraq, Syria, across the greater middle east and into Africa. Now in the heart of Europe.

I have reported on the dispossessed and homeless. The exiled and refugees.

Peoples living as stateless nations within bigger nations. Where peoples are chaffing against borders that have been imposed on them, by governments that have often been imposed on them by forces outside of their control.

I reported those things up close, seeing the impact that it had on people's lives. Not just to hover above, but to report this from the ground up. To walk in the blood of the bombings, the terrorist bombings themselves. To see heads severed from bodies. To see people picking bits of flesh out of the shrapnel-marked walls to put into plastic bags so that they could bury them. To stand in blood so thick that when I went to sleep at night I could still taste it in the back of my throat. And to see the aspirations of people to be able to live lives with dignity and meaning, often when all certainty had been removed.

It couldn't help but have an enormous impact on me both as a reporter and as a person, and more specifically, as an Australian indigenous person. The years that I spent reporting on the conflicts in Afghanistan, Iraq and throughout the middle east; the rise of China; into the secret

world of North Korea; I had the sense that I was living my own history in real time.

The struggles of those peoples, the impact of politics and conflict and religion and economy on those lives, were the same things that we had endured here as indigenous peoples. But in those years reporting it, I got to make those connections in a real, lived, way, in a first-hand way.

When I looked into the eyes of a refugee in a refugee camp in Afghanistan and Pakistan, I knew that look. It was the look that was in the eyes of my father or my grandfather; the people I grew up with.

When I looked at the struggle of people to assert their culture, to speak their languages, to decide for themselves their identities, I saw our struggle. I returned to Australia just over two years ago to a country that in many ways is the envy of the world; in many ways is a model of a liberal, western, democratic, prosperous, safe, cohesive, secure country. A country that has been able to draw people from all around the world and bind us together in a sense of what it is to be an Australian, and to live in a country such as Australia.

But when I returned I saw another country, a country that was still divided across the chasm of its own history. That despite all of its great achievements still has this tension unresolved that sits at the heart of Australia; the tension that emerges from the very birth of the modern nation of Australia; that collided with the tens of thousands of years of traditions of my people.

These are the questions that are still unresolved in Australia. These are the questions that emerge out of what the anthropologist Bill Stanner in the 1960s called "the great Australian silence". I'm born out of the great Australian silence. This was the forgetting, as he said, on a national scale. The writing of history that wrote us out of the story of this country.

Words.

We, gathered at the 2017 national constitutional convention, coming from all points of the southern sky, make this statement from the heart:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the creation, according to the common law from ‘time immemorial’, and according to science more than 60,000 years ago.

This sovereignty is a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.

Five years ago. First nations people delivered the Uluru statement from the heart.

Megan Davis – constitutional lawyer and one of the architects of the Uluru statement – gave this oration last year and reminded us that the message of voice, treaty, truth is the legacy of Eddie Mabo.

Mabo was about more than native title – it was about social justice. This has never been delivered she said.

Words. This is the torment of our powerlessness.

Words – Makaratta. A Yolngu word. To come together after a struggle. The make agreements. To sign treaties.

Megan said treaty is the centre piece of the Uluru statement.

Words. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.

Well Australia now stands at a moment of history. The new Prime Minister, Anthony Albanese, says there will be a

referendum to enshrine a voice – an indigenous representative body – in the constitution.

There will be many words between now and then.

And the Uluru statement is not the final word or the only word. There are those among our people who do not support it. They want more. They want sovereignty. They want treaty.

I understand that.

They are voices to be heard. Because there is no one voice. Together our voices make a stronger voice.

Words.

I want to give two words from my people Wiradjuri. Yindyamarra Winanghanha.

Yindyamarra is respect – it is quiet – it is humble. Winanghanha is to return to knowing. To know what we have always known.

Together Yindyamarra Winanghanha means to live with respect in a world worth living in.

That was Eddie Mabo's gift. To build a world worth living in.

When our world is ablaze with conflict. When democracy is teetering and autocracy is rising. When voices within democracies silenced and marginalised are demanding to be heard.

We are bringing ours and challenging our democracy to examine itself and for our constitution to be seeded in the first footprints not just the first settlers.

To strengthen our democracy as Eddie Mabo strengthened our law.

As this brave man's voice – even as he had passed – was heard by another man who is now gone and together they changed us.

To Eddie Koike Mabo and Chief Justice Sir Gerard Brennan.

We thank you.

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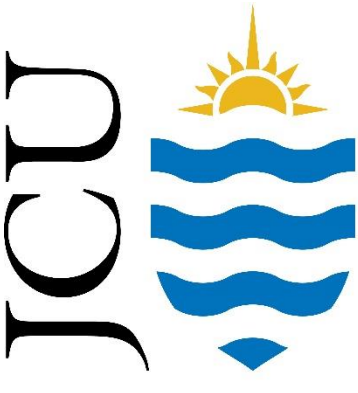

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