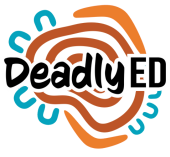


3 June, 1992



# Mabo Decision

Secondary History activity



Mabo plaintiffs, witnesses & their lawyer at the Supreme Court of Queensland, May 1989

## Background:

The 20th century was a significant time for First Nations peoples in Australia. As Australia was finding its feet as a nation, First Nations peoples protested hard for their rights and freedoms – the basic rights that should be afforded to all human beings, and their rights to be able to fulfill their birthright and responsibilities to Country and culture. First Nations peoples were not included in modern Australia – the effects of government policies to erase them and to keep them on the periphery of society, were and still are, ricocheting within First Nations communities today.

In 1963, the Yolgnu peoples presented the Australian government with their first Bark Petition in protest of their land being leased for mining. In 1966, Vincent Lingiari, a Gurindji man, led his people in a walk-off for rights to their land. These two famous land rights protests led to an inquiry into the land rights of First Nations peoples known as the Woodrow Commission. The findings of the commission resulted in the formation of the Aboriginal Land Rights (Northern Territory) Act, 1976. Today, more than 50% of the Northern Territory has been returned to First Nations peoples. It would be this Act that would trigger one of the most historic events of the 20th century in Australian history.



### **The Mabo Decision:**

In 1982, five Meriam people, Eddie Koiki Mabo, Reverend David Passi, Sam Passi, James Rice and Celuia Mapo Sale, challenged the State of Queensland and the Commonwealth of Australia to recognise that the Meriam people are the Traditional Owners of the Murray Islands in the Torres Strait. As Eddie Koiki Mabo was the first named plaintiff the case became known as the Mabo Case. The case challenged the foundations of terra nullius that allowed the British to take this land for the Crown in 1788 and abolish any existing rights that may have existed previously.

The High Court required the Supreme Court of Queensland to investigate the claims of the Mabo Case, which is known as Mabo v Queensland (No.1). However, while the case was being investigated, the Queensland state government passed the Queensland Coast Islands Declaratory Act, 1985, which stated 'Any rights that Torres Strait Islanders had to land after the claim of sovereignty in 1879 is hereby extinguished without compensation'. Mabo went to the High Court to challenge this new legislation and the High Court ruled that this law was inconsistent with the Racial Discrimination Act, 1975, and was therefore invalid. On November 16, 1990, the Hon Justice Martin Moynihan concluded that the Meriam people had a strong system of customary land rights that had existed prior to European settlement, which continued to the present. The results of Moynihan's decision led to the subsequent High Court case, Mabo v Queensland (No.2), which was to determine the matter of the Meriam peoples' land rights and lawful custodianship to their Country.

On 3 June, 1992, the High Court, ruled by a majority of six to one, overturned terra nullius ruling that First Nations peoples had lived in Australia for thousands of years and enjoyed rights to their land according to their own laws and customs. The judges stated that 'the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands'. With this decision, a new doctrine of native title replaced the 17th century doctrine of terra nullius. The following year the Native Title Act, 1993, was passed into law on 24 December.



### **Significance:**

The Mabo decision was a turning point for the recognition of First Nations peoples' rights because it recognised that First Nations peoples have rights to the land and that those rights existed before the British arrived and can still exist today.

### **What is Native Title?**

Native title is the legal recognition of the traditional communal, group or individual rights and interests which First Nations peoples have in land and water, where First Nations peoples have continued to exercise their rights and interests in accordance with traditional law and customs pre-dating European invasion. To date, there have been 555 native title determinations since the Mabo decision.

### **Learning Activities –**

#### **Yarning about the Mabo Case:**

1. What do you think terra nullius meant to the British?
2. What do you think terra nullius means to First Nations peoples?
3. How do you think protesting for their rights impacts First Nations people? How do you know this?

#### **Discussing Country:**

1. Using the AIATSIS Map of Indigenous Australia find Murray Island.

#### **Understanding land rights:**

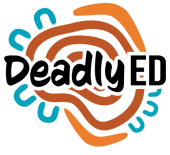
1. Identify the two land rights cases that occurred before the Mabo decision.
2. What was introduced following the two land rights cases?

#### **Thinking critically about the Mabo Case:**

1. Identify the reasons why Mabo wanted to challenge the foundations of terra nullius.
2. In your own words, explain (the causes and effects) of the Mabo decision.
3. Discuss why Native Title is important to First Nations peoples.

#### **Expanding your learning:**

1. Research the current state of land and water rights in Australia. In what ways are First Nations peoples still fighting to land and water rights? Refer to one land and one water rights case.



**Teacher notes:**

- To further expand this perspective in your teaching and learning program the film Mabo.
- Yarn with your local First Nations community about local land rights issues.

**Australian Curriculum links:**

- the contributions of significant individuals and groups in the campaign for the recognition of the rights of First Nations Australians and the extent to which they brought change to Australian society (AC9HH10K10)
- the significant events and methods in the movement for the civil rights of First Nations Australians and the extent to which they contributed to change (AC9HH10K11)
- the continuing efforts to create change in the civil rights and freedoms in Australia, for First Nations Australians, migrants and women (AC9HH10K13)