

MABO DECISION, LAND RIGHTS AND NATIVE TITLE

"The victory of the 1967 Referendum was not a change of white attitudes. The real victory was the spirit of hope and optimism which affected blacks all over Australia. We had won something... We were visible, hopeful and vocal."

Oodgeroo Noonuccal, (Kath Walker), Minjerribah woman, 1970



Demonstration in support of Aboriginal rights.
Image: National Archives of Australia: A6180, 5/3/74/88

The Referendum result is seen by many as a catalyst for positive changes for Aboriginal people. Since 27 May 1967, laws in some states have been passed in relation to land rights, anti-discrimination and the preservation of cultural heritage.

The 1992 Mabo vs Queensland (No. 2) High Court decision is one such case, a milestone in Aboriginal people's rights. 2017 marks its 25th anniversary, which led to the Native Title Act of 1993, an important step forward in improving rights for Aboriginal Australians today.

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The British settlers took our land. No treaties were signed with the tribes. Today we are REFUGEES. Refugees in the country of our ancestors. We live in REFUGEE CAMPS— without land, without employment, without justice.

The British Crown signed TREATIES with the Maoris in New Zealand and the Indians in North America.

We appeal to the Queen to help us, the Aboriginal people of Australia.

We need land rights and political representation now. SIGNED:

Larrakia petition to the Queen, 1972.

Image: National Archives of Australia: A2354, 1973/86

**DID YOU
KNOW?**

The *Aboriginal Land Rights (Northern Territory) Act 1976* was the first piece of legislation passed to legally recognise Aboriginal land through a claim process.

The Aboriginal Land Bill (WA) 1985

In May 1983 the WA Labor Government led by Brian Burke announced an inquiry into the means of protecting Aboriginal relationships with the land under the direction of Commissioner Paul Seaman QC. As part of this inquiry a series of hearings were conducted in the north and central parts of the State. By December 1983, the inquiry had received 195 written submissions and in 1984 a discussion paper, known as the Seaman Inquiry, was released that proposed possible management processes for claims to land.

As a consequence, an Aboriginal Land Bill was introduced in the Legislative Assembly the following year but was defeated in the Legislative Council. The Seaman Inquiry submissions and reports are held at the State Archives of Western Australia.

Vincent Lingiari and Gough Whitlam

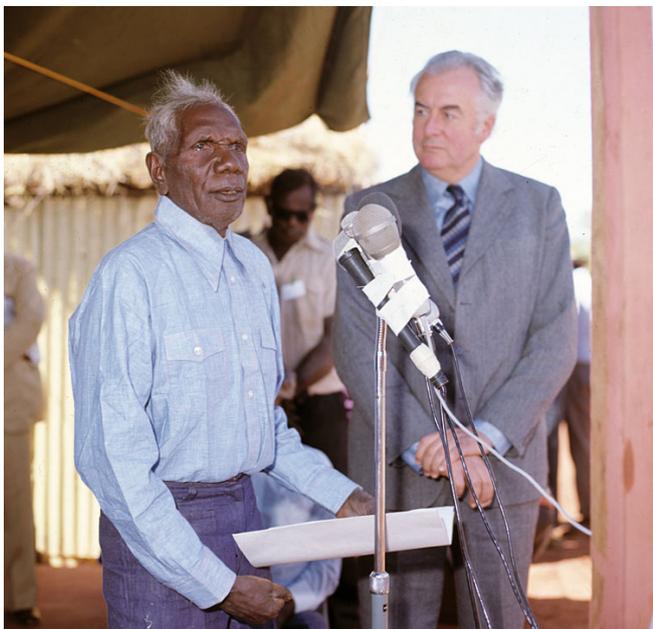


Image: Vincent Lingiari speaking at the Wave Hill handover.
National Archives of Australia: A8598, AK21/4/80/9

This photograph records the historic moment the Gurindji people of the Northern Territory became the first Aboriginal people to be granted leasehold title to their traditional lands.

In 1966, 200 Aboriginal stockmen led by Gurindji Elder Vincent Lingiari, demanded equal pay at the Wave Hill cattle station and walked off the job. The station was on traditional Gurindji land and the demands soon included the return of their lands.

The presence of the then Prime Minister Gough Whitlam in the photograph above is a reminder of the crucial role that the Commonwealth Government played, who purchased the land from the British pastoral company Vestey's before handing title to the Gurindji people at a special ceremony.

Vincent Lingiari (1908–88) is pictured accepting the lease documents from Whitlam. In his speech, Lingiari stated that Aboriginal people and all other Australians should now 'live happily together as mates' and 'not fight over anything'. At the ceremony Whitlam poured a handful of soil slowly into Lingiari's hands and said,

"I put into your hands this piece of the earth itself as a sign that we restore them [lands] to you and your children forever".

In 1976 the land covered by the lease was converted to full freehold title under the Aboriginal Land Rights Act 1976 (Northern Territory). This gave the Gurindji people the rights of land ownership.

Mabo v Queensland (No. 2)

The Mabo Case was a landmark decision in progressing Aboriginal Native Title rights.

In May 1982, Eddie Mabo and four other Meriam people of the Murray Island (Mer) began action in the High Court of Australia to legally confirm their traditional Native Title rights. It was claimed that the Meriam people of Murray Island (Mer) could prove continuous possession of the island. Although it was agreed that the Commonwealth Government had settled the islands in 1879, the people of Mer argued that their rights to custodianship had not been erased by British sovereignty. On 3 June 1992, following a decade of litigation, six of the seven presiding judges found that the Meriam people were:

'entitled as against the whole world to possession, occupation, use and enjoyment of (most of) the lands of the Murray Islands'.

This judgement is colloquially referred to as, 'The Mabo Case.' The *Native Title Act 1993* is the legislation enacted as part of the Commonwealth Government's response to the decision.

The Mabo Case challenged two perspectives of the Australian legal system:

- That Aboriginal and Torres Strait Islander peoples had no concept of land ownership before colonisation.
- That British sovereignty over Australia surrendered the ownership of all land to the Crown and abolished any existing rights to land.

DID YOU KNOW?

Terra nullius is loosely defined as 'land belonging to no-one.' At the time of British settlement it was decided that the Australian continent belonged to no one. However the Mabo Case revoked this notion, as it disputed 'terra nullius' and found that Aboriginal people had existing customary laws and thus had existing Native Title rights.

Steve Mam

“In these contemporary times we also struggle to convey the importance of connection to country and place.”

Steve Mam, Torres Strait Islander Elder, undated

Steve Mam was born at Moa Island in the Western group of the Torres Strait Islands. Throughout his life he was an active member of the Aboriginal community, as well as a political advocate. It is recounted that the turning point in his life was the 1967 Referendum when he became a political activist and began committing himself to fighting for the rights of Aboriginal people.

He played a significant role in numerous Aboriginal community organisations and representative bodies including Inna Torres Strait Islanders Incorporation, Born-Free Club, Kambu Medical Centre, Yalangi Preschool, the Dreamtime Cultural Centre, the National Secretariat of Torres Strait Islanders, the National Indigenous Development Alliance (NIDA) and the Wagga Torres Strait Islanders Dance Company.

In 1979 Steve became a founding member and State Chairperson of the National Aboriginal Conference (NAC - see Treaty/Makarrata in Human Rights section) and was a Native Title political supporter during the Mabo vs Queensland [No.2] High Court hearings.

Steve was a co-founding member of the Aboriginal and Islanders' Community Health Service (AICHS) in Brisbane, Aboriginal & Torres Strait Islander Legal Services, and Black Community Housing Service. He was also elected Regional Councillor of the Aboriginal and Torres Strait Islander Commission (ATSIC) from its inception in 1989 until its finish in 2004.

Steve believed that a strong foundation for individuals, families and the community was essential. He was a passionate supporter of autonomy for Aboriginal people, self-determination and economic development, and always said it was important to “listen, understand, ask questions and take action”.

Native Title

Aboriginal people traditionally have a deep connection to the land that is core to spiritual, cultural, and religious wellbeing. Native Title rights and interests relate to land and waters that are held by Aboriginal and Torres Strait Islander peoples under their traditional laws and customs, and recognised by common law. Native Title may exist in cases where this connection has remained substantially uninterrupted since British colonisation. Particular rights and interests may include the right to live and camp in the area, conduct ceremonies, hunt and fish, build shelter, and visit places of cultural importance.

The Federal and High Courts, in conjunction with state governments and Native Title Representative Bodies [that represent Aboriginal claimants] determine whether Native Title does or does not exist in given areas and whether a claim to land has been accepted.

See if the area you live is covered under a Native Title claim:

<http://www.nntt.gov.au/searchRegApps/Pages/default.aspx>

Native Title may exist in the following places:

- vacant or unallocated Crown land;
- some reserve lands such as national parks, State forests and public reserves;
- various pastoral and agricultural leases;
- land held by or for the benefit of Aboriginal people or Torres Strait Islanders;
- oceans, seas, reefs, lakes, rivers, creeks, swamps and other waters that are not privately owned.

Native Title Representative Bodies and Service Providers (NTRB and NTRSP)

NTRB's and NTRSP's are federally funded independent organisations, which act on behalf of Native Title claimants interests, to assist in the preparation and process of applying for Native Title claims. In WA there are five NTRB's. These are:

Kimberley Land Council

Kimberley region

Yamatji Marlpa Aboriginal Corporation

Pilbara and Geraldton regions

Central Desert Native Title Services

Central Desert region

Goldfields Land and Sea Council Aboriginal Corporation

Goldfields region

South West Aboriginal Land and Sea Council Aboriginal Corporation

South West region

Native Title Prescribed Body Corporates (PBC)

When a determination recognising Native Title is made, a PBC must be established to represent the successful applicants and their interests. If a mining company, for example, wishes to mine on land that has been determined under the *Native Title Act 1993*, the mining company must first approach the PBC for permission to enter the area.

Aboriginal Tent Embassy

The Aboriginal Tent Embassy was established by activists on the lawns of Parliament House in Canberra on 26 January 1972, in response to the McMahon government's failure to recognise land rights. By 1992 the Embassy became a permanent fixture and remains there today. The image below depicts protestors at the Aboriginal Tent Embassy in 1974.



Image: Protestors at the Aboriginal Tent Embassy.
National Archives of Australia, A6180, 14/3/74/338

Research Questions:

What is terra nullius?

What two perspectives of the Australian legal system did the Mabo case challenge?

Who was Vincent Lingiari and why was he significant to Aboriginal Australia?

What was the significance of the Aboriginal Tent Embassy? How is this relevant today?

Activity:

Native Title: The National Native Title Tribunal website provides detailed and current spatial data on a national, state and territory and regional level. Go to their website and explore the current Native Title claims for your area:

<http://www.nntt.gov.au/assistance/Geospatial/Pages/Maps.aspx>

Please see 'Teachers Resource' section for more resources and project suggestions.

Sources:

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Kia Dowell, *ABC Online*, ['Everyone has a role to play in closing the gap between Indigenous and non-Indigenous Australia, Kia Dowell writes'](#) 9 February 2016

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State Library of Queensland: [Yarnin' time with Uncle Steve Mam](#)