

# The Mabo Native Title Decision

Mabo Day is marked annually on 3 June. It commemorates Mer Island man Eddie Koiki Mabo and his successful efforts to overturn the legal fiction of terra nullius, or 'land belonging to no-one'.

The Mabo decision was a legal case held in 1992. It is short for Mabo and others v Queensland (No 2) (1992). The legal decision was made by the High Court on 3 June 1992. The High Court is the highest court in Australia's judicial system.

Eddie Mabo challenged the Australian legal system and fought for recognition of the rights of Aboriginal and Torres Strait Islander peoples as the traditional owners of their land.

## Who was Eddie Mabo?

Eddie 'Koiki' Mabo was a Torres Strait Islander who believed Australian laws on land ownership were wrong and fought to change them. He was born in 1936 on Mer, which is also known as Murray Island, in the Torres Strait.

When he was growing up, life in the Torres Strait Islands was strictly regulated with laws made by the Queensland Government. In his heart, Eddie believed the land he lived on belonged to the Torres Strait Islander people who had lived there for thousands of years. But the Australian Government also believed that it owned the land.

In 1981, Eddie Mabo made a speech at James Cook University in Queensland, where he explained his people's beliefs about the ownership and inheritance of land on Mer. A lawyer heard the speech and asked Eddie if he would like to challenge the Australian Government in the court system, to decide who the true owner of land on Mer was—his people or the Australian Government.

## Why was the case so important?

Aboriginal and Torres Strait Islander peoples occupied Australia for 65,000 years before the British arrived in 1788. They spoke their own languages and had their own laws and customs; they had a strong connection to their traditional land or Country.

When the British arrived, they declared that Australia was terra nullius (empty land – or land that belongs to nobody). As a result, Aboriginal and Torres Strait Islander peoples' occupation of and unique connection with the land were not recognized; the British took the land without agreement or payment.

The Mer Islanders decided they would be the ones to challenge "terra nullius" in the High Court and that Eddie Mabo would be the one to lead that action.

## What was the result?

The Mabo case ran for 10 years. On 3 June 1992, the High Court of Australia decided that terra nullius should not have been applied to Australia. This decision recognised that

Aboriginal and Torres Strait Islander peoples have rights to the land – rights that existed before the British arrived and can still exist today.

The Mabo decision was a turning point for the recognition of Aboriginal and Torres Strait Islander peoples' rights, because it acknowledged their unique connection with the land. It also led to the Australian Parliament passing the Native Title Act in 1993.

Eddie Mabo never found out the result of his legal case. He died in January 1992, just five months before the High Court made its decision.

## **What is Native Title?**

Native title is the legal recognition that some Aboriginal and Torres Strait Islander peoples have rights to, and interests in, certain land because of their traditional laws and customs.

The rights granted by native title are not unlimited – they depend on the traditional laws and customs of the people claiming title. Other people's interests in, or rights to, the land are also relevant, and usually take precedence over native title. To have native title recognised under the Native Title Act 1993, Aboriginal and Torres Strait Islander peoples must prove that they have a continuous connection to the land in question, and that they have not done anything to break that connection (such as selling or leasing the land).

Native title can be recognised in different ways. Aboriginal and Torres Strait Islander peoples may be granted the right to live on the land; access the area for traditional purposes; visit and protect important places and sites; hunt, fish or gather traditional food or resources on the land; or teach Aboriginal and Torres Strait Islander laws and customs on the land. In some cases, native title can include the right to own and occupy an area of land or water to the exclusion of all others.

## **Why is Native Title important?**

Native title is important because dispossession and denial of land was the first act in the relationship between Aboriginal and Torres Strait Islander peoples and Europeans; setting the tone for the events that followed.

The Native Title Act 1993 is important because it determines how native title interests are formally recorded and recognised. It sets the rules for dealing with land where native title still exists or may exist.

While the law recognises that native title may exist, the requirements for proof are significant and burdensome. Generally claimants must provide evidence of a continuous system of law and custom that gives rights to the land, and that this has been handed down from generation to generation since before colonisation.

Once a claim has been successfully filed and registered with the National Native Title Tribunal, Aboriginal and Torres Strait Islander applicants can claim the right to negotiate against development of the land. However, this does not mean exclusive land rights are given. If the rights of pastoralists, mining companies, federal government, or private owners come into conflict with native title rights, they supersede the native title rights.

There have been 587 Native Title Determinations as of May 2023. See the National Native Title Tribunal website for up to date statistics. <http://www.nntt.gov.au/Pages/Statistics.aspx>