

Australian Settlement

In August 1770, Captain James Cook claimed all of the east coast of what is now Australia as British territory. Under internationally recognised law at the time, Cook could claim land on any one of the three following legal grounds:

- If the land was uninhabited, any country could claim ownership and settle the land under the principle of *terra nullius* (land belonging to no-one).

However

Although the land was inhabited, Cook claimed it under the principle of *terra nullius*.

The British did not recognise the Aboriginal people as having any legal title over the land as they had no written laws of **land tenure** of the type that existed in European countries.

In fact, the different Aboriginal groups that lived in different parts of the country had their own systems of land ownership and usage, but the British made no real attempt to familiarise themselves with the details of these systems.

The Wake Hill walk off

Aboriginal people employed as stockmen and other workers on some of the large cattle stations in Queensland, Western Australia and the Northern Territory began to campaign for improved wages and conditions, including the right to have a say in the management of traditional lands that were included in these stations. In 1966, Gurindji stockmen at Wave Hill cattle station in the Northern Territory walked off the job, led by Vincent Lingiari, and moved their families to Daguragu (known in English as Wattie Creek). This was close to a number of Gurindji sacred sites and seen as an important part of traditional lands, even though it was leased to Vestey, the English company that ran the cattle station. After a long campaign in support of their land rights, the Gurindji were eventually granted title to their land by the Whitlam Labor Government in 1975. The following year the Commonwealth Parliament passed the *Aboriginal Land Rights (Northern Territory) Act 1976*, which provided a mechanism for the granting of traditional Aboriginal land to its original owners

Property Law

The Mabo Case

- The Mabo case was a milestone court case which paved the way for fair land rights for Australia's Indigenous people. During 1982 the Indigenous people of Mer island (Murray Island), led by Eddie Mabo, began their fight for land rights. Their island, in the Torres Strait, was at possible risk of development and the Meriam people wanted to ensure its protection. Their argument was that many generations of Meriam people had lived on the island, even prior to the arrival of Europeans. They believed that they were the traditional owners of the land and the nearby seas. Their argument also defied the claim that Australia was terra nullius, which the Europeans had declared when they claimed Australia in 1770.
- The court case took 10 years of fighting by the Meriam people, and most especially Eddie Mabo. On 3 June, 1992 the high court granted the Meriam people their land rights. This decision overturned the long standing idea of the British that Australia was an unoccupied land (terra nullius). The judge further stated that Australia's Indigenous peoples had not been traditional nomads, but groups that had strong relationships with the land as it connected them to their traditions and ancestors. The Meriam people of Mer Island received a native title declaring that they were the rightful and traditional owners of the land. The case became known as the Mabo case in honour of all the hard work Eddie Mabo had contributed to the fight for Indigenous rights.

Eddie Mabo

- Koiko 'Eddie' Mabo was the man who initiated the land rights argument when he found out that his birth place, Mer Island, was not legally his or his families. This news angered and upset Mabo and he began speaking out and telling people his story. He received a great amount of support, especially from fellow Indigenous people, and in the early 1980s a lawyer suggested he take the terra nullius claim into the courts of law. Mabo followed this advice.
- The significant win by the Meriam people was marred by the death of Mabo just five months prior to the decisions. Mabo was honoured with a royal traditional burial and the case was named after him.
- The monumental decision led the way for land right legislation (laws) and gave Indigenous people more rights in Australia. Many other Indigenous groups began fighting for their own land rights, which worried the government as much of the disputed land was being used for profitable purposes. In 1993 the government passed the Native Title Act which stated laws and regulations for the courts to follow in future claims.

Native Title Act

- The Mabo decision made the issue of land rights well known across Australia and many other Indigenous people were encouraged by the decision and began their own land right cases. The government developed the Native Title Act to try and clarify the processes that need to be followed in Native Title claims.

The Wik Decision

- The Wik case involved the ownership of land which had been leased out by the government for pastoral purposes. Pastoral leases were created by British officers when squatters were land grabbing in the 1830s and 1840s. The authorities defined pastoral leases as leases that did not grant squatters exclusive ownership of the land. Instead the land was owned by the government on behalf of the Australian public. Therefore it was public property.
- The Wik Indigenous people of Cape York, Queensland, had developed a court case which argued that land rights and pastoral leases could coexist, giving both Indigenous people and leaseholders rights to the land. In 1996 the High Court agreed with the Wik people. This decision meant that Indigenous people were gaining more land rights in Australia.
- The Mabo and Wik decisions made land rights claims easier for many Indigenous people in Australia. They were finally regaining their ancestral land and reconnecting with their traditions and heritage. However many land rights laws continued to change and are still an issue of discussion today.