

1791

Mer, also known as Murray Island¹, first came into contact with the British. The Meriam people were described as friendly and open to trade².

Before Mabo

1871 – 1879

The London Missionary Society (LMS) arrived, imposed Christianity, converted many Islanders but Meriam customs continued and adjusted.

The Torres Strait was annexed to be a colony of Queensland which brought the introduction of British sovereignty and common law; “Terra Nullius” applied with no recognition of, or treaties with, Islanders.

1901

Commonwealth established under Constitution. S 51(26) leaves legislative power over Indigenous people with the new States and Territories.

1939 – 1945

During World War II, Torres Strait Islanders were recruited to help defend the strategically important Torres Strait region and support wartime operations.

After the war ended, their land was still controlled by the government, and many continued to live on Islander reserves.

In 1960s, Indigenous land rights campaigns began growing across Australia.

1963

The Yolngu people of Yirrkala in Arnhem Land presented the Bark Petitions, calling for recognition of their land rights.

1966

Gurindji stockmen began the Wave Hill Walk-Off in the Northern Territory, protesting poor working conditions and later demanding land rights.

1967

Constitutional referendum to allow the Commonwealth parliament to make laws regarding Indigenous Australians.

1972

The Aboriginal Tent Embassy was established in Canberra to protest the lack of recognition of Indigenous land rights, which still operates today.

1975 – 1976

The Whitlam Government introduced the *Aboriginal Land Rights (Northern Territory) Bill*. After Whitlam was dismissed, the Fraser Government passed the law with amendments in 1976⁴.

1982

The Queensland Government proposed Deeds of Grant in Trust, known as DOGIT, to replace Islander reserves. Mabo and other Meriam people saw this as another way for the state to increase control.

The Mabo case began in the High Court. The Meriam plaintiffs argued that their land and sea rights came from traditional law, had existed for generations, and had survived missionary arrival, colonisation, and later Queensland and Commonwealth laws. The case challenged *terra nullius*, the idea that Australia was legally empty before British colonisation. Mabo’s claim argued that this ignored the long occupation, use and governance of land by Aboriginal and Torres Strait Islanders.

Terra nullius conflicted with basic Indigenous property law principles, including inherited land rights under continuing custom and tradition and the link between ownership and control. The Mabo claim was not an appeal for sympathy, but a claim at law to establish that the doctrine of Terra Nullius should be rejected in modern Australian law.

1985 – 1988

In 1985, the Queensland Government passed the *Queensland Coast Islands Declaratory Act 1985*. This law stated that the Islands belonged fully to the Queensland Government⁵ and there was no interest in the land prior to this annexation⁶. If accepted, it would have blocked Mabo’s claim.

In 1986, the trial of facts began before Moynihan J. in Brisbane in the Queensland Supreme Court. After 5 weeks, only 2 witnesses were heard due to legal arguments and illnesses. The trial was adjourned and part-heard.

In 1988, the High Court, by a 4:3 majority, declared the *Queensland Coast Islands Declaratory Act* inoperative. The Court found that the Act conflicted with the Commonwealth’s *Racial Discrimination Act 1975*⁷. Under section 109 of the Australian Constitution⁸, the Commonwealth law prevailed over the inconsistent Queensland law.

1981

At the James Cook University Land Rights Conference, Mabo and Rev. Dave Passi called for legal action, retained lawyers, and announced plans for a High Court test case.

Eddie Koiki Mabo was born in 1936 on Mer

During Mabo³



After Mabo

1989

Justice Moynihan delivered his Determination of Facts, rejecting Mabo’s personal land claims, but made some findings in favour of other plaintiffs and their claimed land areas⁹.

1991

The “successful” plaintiffs, Rev. Dave Passi and James Rice, plus Mabo, proceeded to the High Court to argue the ultimate legal issues, choosing not to appeal Mabo’s rejection to the Queensland Court of Appeal.

1992

In January, Eddie Koiki Mabo passed away before the final decision was handed down.

In June, the High Court, by a 6:1 majority, rejected terra nullius as a legal fiction and recognised native title as a form of property right. The Court declared that the Meriam people had native title over the Murray Island.

1993

The *Native Title Act 1993* was passed. It created the framework for recognising native title claims in Australia.

1998

The Howard Government amended the Act. These changes introduced Indigenous Land Use Agreements (ILUAs)¹⁰, but were criticised as reducing Indigenous peoples’ property rights¹¹. However, it allowed traditional owners to negotiate terms over land with other entities.

2015

The Australian Law Reform Commission recommended major reforms to the *Native Title Act 1993*, particularly around section 223(1), legal complexity and the burden of proof. These recommendations have not been implemented.

March 2025

There were 1,490 ILUAs in June 2024¹². The Federal Court had made 527 determinations that native title exists, providing “exclusive” or “non-exclusive” rights to the claimed area, covering around 50% of Australia’s landmass¹³.

NTA s223(1) remains difficult to apply due to legal complexity.



1. See generally Queensland Government, Community Histories – Mer (2023) <https://www.qld.gov.au/firstnations/cultural-awareness-heritage-arts/community-histories/community-histories-m/community-histories-mer>.
2. M Flinders, A Voyage to Terra Australis, (W Bulmer and Co, London, 1814); S Mullins, Torres Strait, A History of Colonial Occupation and Culture Contact 1864-1897 (Central Queensland University Press, Rockhampton, 1994) 18.
3. See generally, Bryan Keon-Cohen, The Mabo Case: From Terra Nullius to Native Title (2025).
4. Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).
5. Queensland Coast Island Declaratory Act 1985 (QLD) s 3(a).
6. Ibid s 5.
7. Mabo v Queensland and the Commonwealth (No 1) (1988) 166 CLR 186.
8. Australian Constitution s 109.
9. Mabo v Queensland: Determination of Facts, (Sup. Crt of Queensland, Moynihan J, 16/11/1990). Constitution of Australia 1901 (CTH) s 109, Section 109 deals with inconsistencies between state and federal law when a matter is considered a concurrent power, and states that to the extent of the inconsistency, state law is invalid.
10. Native Title Amendment Act 1998 (Cth)
11. Natalie Cromb, How Did the Wik 10-Point Plan Outline Our Future? (SBS NITV, 2017) <https://www.sbs.com.au/nitv/article/how-did-the-wik-10-point-plan-outline-our-future/0i6n8y6uo>.
12. Productivity Commission, Closing the Gap Information Repository: Indigenous Land Use Agreements (Web Page, 30 June 2024) <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area15/indigenous-land-use-agreements>.
13. National Native Title Tribunal, Statistics (12 May 2025) <https://www.nntt.gov.au/Pages/Statistics.aspx>.

This document contains names of deceased Indigenous people/s.

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The Mabo Decision:

A landmark decision of the High Court of Australia that recognised the existence of Native Title in Australia.

Dr. Bryan Keon-Cohen AM, KC alongside Ron Castan AM KC and Barbara Hocking (until 1987) were the three Melbourne barristers representing Mabo, Rev. Dave Passi, Celuia Mapo Salee, James Rice and Sam Passi throughout the proceedings of what became known as 'The Mabo Case'. For their development of Indigenous rights and general services to the law and the community, both were made Members of the Order of Australia in 1993 (Castan) and 2012 (Keon-Cohen).

The following part of this document is largely summarised from Bryan's larger submission to the Victoria Law Foundation, which is accessible online titled 'The Mabo Case: From Terra Nullius to Native Title'.