



## Aboriginal Heritage Office

Ku-ring-gai, Lane Cove, North Sydney, Northern Beaches,  
Strathfield and Willoughby Councils

[www.aboriginalheritage.org](http://www.aboriginalheritage.org)

## Yarnuping Education Series

© Copyright Aboriginal Heritage Office

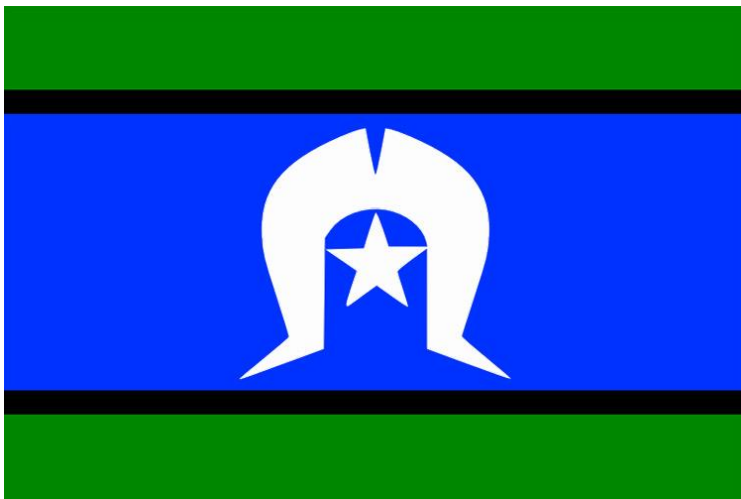
### Yarnuping 7 – Mabo

June the 3rd is Mabo Day, and it fittingly is the last celebrated day of Reconciliation Week. Mabo day commemorates the courageous efforts of Eddie Koiki Mabo to overturn the fiction of terra nullius.

To understand Mabo Day you will need to understand the following terms

**Terra Nullius** - We will never know how many Aboriginal people inhabited the island continent in 1788. The colonists were led to believe that the land was *terra nullius* ('no one's land'), which Lt. James Cook declared Australia to be in 1770, during his voyage around the coast of Australia. This was despite the many fires being witnessed along the coastline.

**Native Title** - Native Title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs as set out in Australian Law. Native Title is governed by the Native Title Act 1993.



#### The Torres Strait Islander Flag

- The land - New Guinea and Australia on either side
- The 5 pointed star represents the 5 Island Groups of the Torres Strait
- The Dhari is the traditional dance & ceremony headdress of the Torres Strait – symbolising identity and unity

These legal tenets said that Australia and the Torres Strait Islands were not owned by indigenous people because they did not 'use' the land in ways Europeans believed constituted some kind of legal possession. This idea was used to give 'legitimacy' for the British and later colonial and Australia governments to allow the dispossession of all indigenous people of their land and access to it.

Whether an Aboriginal group lost its land to colonial settlement/invasion in 1788, 1880 or 1970, the argument was that they never owned it, never had internationally recognisable legal entitlement to it and therefore could be considered trespassers on Crown land and would not be able to claim any compensation for its loss.

Koiki Mabo and his legal team fought hard to demonstrate that he and his people had traditional land ownership systems on Mer in the Torres Strait Islands. The case went to the High Court. Unfortunately, Eddie Mabo died 5 months before the historic decision came on 3 June 1992 that 'native title' did exist and it was up to the people of Mer to determine who owned the land. He gave his life to fighting this battle. His co-plaintiffs, James Rice, Father Dave Passi, Sam Passi and Celuia Salee, shared his battle. His wife Bonita Mabo and his family supported him all the way.

On the 3<sup>rd</sup> June 1992 six of the seven judges ruled that:

***'Meriam people are entitled as against the whole world, to possession, occupation, use and enjoyment, of the lands of the Murray Island's.'***



Eddie Mabo and his wife Bonita Mabo

## The Fight

Eddie began with his first battle in the Supreme Court of Queensland with the Meriam co-plaintiffs on the 3<sup>rd</sup> June 1986. The Queensland Parliament quickly passed the *Queensland Coast Islands Declaratory Act 1985* in an attempt to retrospectively extinguish the claimed rights of the Meriam people to the Murray Islands. Eddie had to then adjourn the Supreme Court case and went to the High Court of Australia to fight the *Queensland Coast Islands Declaratory Act 1985*. The act was deemed to be invalid as it was in conflict with the Racial Discrimination Act 1975. Eddie went back to the Supreme Court to continue the case.

## Their case:

*'Since time immemorial the Torres Strait Islands of Mer (known as Murray), Dauer and Waier and their surrounding seas, seabeds, fringing reefs and adjacent islets have been continuously inhabited by people called the Meriam people'*

Traditional Torres Strait Islander dancing  
by the women and the men



*"After some argument Moynihan J accepted the plaintiffs' request that the court should adjourn and reconvene on Murray Island for three days, to take evidence, particularly from 16 witnesses, mainly elderly and frail, and also to take a view of the claimed areas of garden plots and adjacent seas... When opening proceedings on the Island on 23 May 1989, Moynihan J 'doubted [whether] the Court has ever sat further north or perhaps further east', and certainly never before on Murray Island. On 26–27 May 1989 the Court also sat in the Magistrates' Court of Thursday Island and heard five Islander witnesses. The visit, as Moynihan J noted in his opening statement, provided a better understanding of the evidence, and of island life. It also revealed the first opposition from some Islanders to the claims being made: two Islanders were called by Queensland during these sittings to oppose Eddie Mabo's claims."*

Keon-Cohen, B A --- "The Mabo Litigation: A Personal and Procedural Account" [2000] MelbULawRw 35; (2000) 24(3) Melbourne University Law Review 893

## Native Title Today

<https://www.abc.net.au/news/2020-05-29/fortescue-andrew-forrest-native-title-yac-high-court-decision/12299700>

### **Fortescue and Andrew Forrest lose High Court appeal over exclusive native title of WA's Yindjibarndi people**

ABC: By Indigenous affairs correspondent [Isabella Higgins](#) and Specialist Reporting Team's [Nick Sas](#) and [Sarah Collard](#)

29.5.20

The head of the Aboriginal corporation fighting Fortescue Metals Group says he can now "give the next generation hope" after the mining giant lost its High Court bid to appeal against a native title determination covering one of its West Australian iron ore mines.

The company was seeking to contest the exclusive possession rights of the Yindjibarndi people over land in the Pilbara that includes the site of its multi-billion-dollar Solomon mine hub.

The High Court today rejected the company's application for special leave to have the case heard, with costs paid to be paid by FMG.

Today's failed bid to the High Court came after the \$40 billion company [lost a Federal Court appeal last year](#), with five judges giving a unanimous decision to uphold the Yindjibarndi people's native title rights.

It paves the way for the Yindjibarndi Aboriginal Corporation (YAC) — the organisation that representing about 800 traditional owners — to pursue what is expected to be a multi-million-dollar compensation payout for both economic loss and spiritual harm.

YAC had [been fighting for ownership of their land since 2003](#), when they first lodged a formal native title claim while simultaneously fighting for a cut of mining royalties.

Native Title is important and essential to protect our country from destruction and to protect our heritage sites. We need your help to continue protection as the fight has not stopped.

Join Eddie Mabos struggle to protect our Land and our rights

Reconciliation Week theme is "All in this Together".



In the middle of Reconciliation Week  
Rio Tinto blasts sacred sites for mining.  
Where are our rights and protections.  
Where were our Government.



<https://www.abc.net.au/news/2020-05-29/ken-wyatt-says-traditional-owners-tried-to-stop-rio-tinto-blast/12299944>

A world-renowned archaeologist has compared the destruction of two 46,000-year-old Aboriginal cultural sites in the Pilbara to the Islamic State's destruction of Palmyra.

**Key points:**

Rio Tinto expressed deep regret over the blast to Indigenous Affairs Minister Ken Wyatt in a private phone call

Mr Wyatt says a lawyer for traditional owners contacted his office last week to ask for the Federal Government to intervene

Permission to blast the site was signed off in 2013

Two sites in the Juukan Gorge were [destroyed last weekend](#) by mining company Rio Tinto, after being approved for destruction in 2013, despite significant archaeological discoveries that were made in 2014.

The blasting of the sites was one of the worst destructions of an archaeological site in recent memory according to Peter Stone, the UNESCO chair in Cultural Property Protection and Peace at Newcastle University in the UK.

"It's a black day for us all," he said.



In 2002 Bonita Mabo, Eddie's wife, called for a national public holiday. Eddie and Bonita's son, Eddie Mabo Jr, said:

*"We believe that a public holiday would be fitting to honour and recognise the contribution to the High Court decision of not only my father and his co-plaintiffs, James Rice, Father Dave Passi, Sam Passi and Celuia Salee, but also to acknowledge all Indigenous Australians who have empowered and inspired each other.*

*To date we have not had a public holiday that acknowledges Indigenous people and which recognises our contribution, achievements and survival in Australia.*

*A public holiday would be a celebration all Australians can share in with pride – a celebration of truth that unites Indigenous and non-Indigenous Australians and a celebration of justice that overturned the legal myth of terra nullius – Mabo symbolises truth and justice and is a cornerstone of Reconciliation."*

#### Resources

- <https://www.abc.net.au/education/learn-english/the-significance-of-mabo-day/11162746>
- <https://aiatsis.gov.au/explore/articles/eddie-koiki-mabo>
- Goodall H (1996) ***Invasion to Embassy. Land in Aboriginal Politics in New South Wales, 1770-1972*** St Leonards, Allen & Unwin
- Bachelard M (1997) ***The Great Land Grab*** Hyland House
- Butt P and R Eagleson (1996) ***Mabo. What the High Court said and what the government did*** 2nd Edition. The Federation Press
- <https://www.uqp.com.au/books/edward-koiki-mabo-his-life-and-struggle-for-land-rights>
- <https://trove.nla.gov.au/work/230134749> Mabo A Symbol of Struggle-The unfinished quest for Voice Treaty Truth.