Introduction

‘Mabo is the name that’s identified with a legal revolution in Australia. But Mabo was not just a court case: Eddie Mabo was a man—an obstinate, difficult and passionate human being, who was consumed with preserving the culture of a tiny island.’

Trevor Graham, co-author/director of Mabo—The Native Title Revolution

In 1992, the High Court of Australia put an end to the legal fiction that Australia was empty before it was occupied by Europeans. It upheld the claim of Eddie ‘Koiki’ Mabo and his fellow plaintiffs that Murray Islanders were the traditional owners of land on the island of Mer in the Torres Strait.

Mabo—The Native Title Revolution delves into the Mabo legal case and the important issues it raises for Australians and indigenous peoples everywhere. This multimedia resource gives an overview of the case and provides an insight into Torres Strait Islander culture and Eddie Mabo himself—both were crucial to the claim’s success. It also examines broader concepts such as colonisation, land rights and native title—in Australia and internationally—and looks at what happened in the past and what is happening now.

Combining CD-ROMs with a website and online database, the project brings together a documentary video with hundreds of specially created audio-visual sequences and a wealth of text and images from primary and secondary sources.

These teachers notes will help you explore the potential of the materials. They provide summaries, set the resources within an educational framework, explain some uses of the key tools and features, and suggest classroom activities. The materials cross disciplines and can be used at different year levels. The variety of media makes it easier for different students to access the content.

It’s assumed that you’ll pick and choose from the vast amount of material available, adapting for a year level, the needs of a particular group of students and your school in your part of Australia.

Levels and audience

Senior secondary, undergraduate and research at adult levels

Key learning areas

Aboriginal Studies, Australian Studies, English, Indigenous Studies, Studies of Society and Environment, History, Legal Studies, Politics, Information Technology, and multimedia across the curriculum
Background information

In 1788, the British claimed ownership of the entire Australian continent. To the European mind, the indigenous people who had occupied Australia for many thousands of years were nomads, without property, social organisation or systems of laws. So the British held that Australia was terra nullius, land belonging to no-one. This included the islands of the Torres Strait.

In 1981, Eddie Mabo and other Torres Strait Islanders decided to fight for their ancestral right to land on Mer, which the British had renamed Murray Island. They took the Australian government to court. The case became known as the Mabo case.

They argued for acknowledgment of ‘native title’ and the complex, customary patterns of land ownership, inheritance and use that predated colonisation. Central to the case was Malo, a Meriam god (represented as an octopus) who gave the Islanders their laws.

When the court ruled in favour of the Murray Islanders in 1992, it recognised their equality before the law and the obligation for Australian law to respect Meriam law. In doing so, it marked a new way for Australia to view its history and future.

Edward Koiki Mabo
• Born on Mer in the Torres Strait in 1936.
• Fifth child of Robert and Poipe Sambo.
• Adopted by his mother’s brother Benny Mabo and wife, Maiga after his mother’s death.
• After leaving Mer at 16, he lived and worked in the Torres Strait, rural Queensland and Townsville.
• Inherited Mabo land, but his adoption and his right to the land would be disputed in the courts.
• Became the leading plaintiff in the Mabo case.

The case
• At a land rights conference in Townsville in 1981, Eddie Mabo and other Murray Islanders decide to pursue their land claim.
• Claim lodged in the High Court of Australia on 20 May 1982.
• Queensland Government responds with a legal challenge in the High Court. Eddie Mabo and the other plaintiffs agree to prepare a ‘statement of facts’ on which the legal argument could proceed.
• Queensland Government passes Queensland Coast Islands Declaratory Act in 1985 which is designed to extinguish native title (if it is found to exist).
• Eddie Mabo and his colleagues launch a challenge to the Queensland Act in the High Court, arguing the law is discriminatory.
• Meanwhile, no agreement is reached on the statement of facts so the High Court refers the matter to the Supreme Court of Queensland in 1986.
• In 1987 Eddie Mabo and his colleagues agree that if their challenge to the Queensland Act fails, they will also drop their land claim case.
• In December 1988, the High Court finds in favour of Mabo and rules that the Queensland Act is discriminatory. This becomes known as Mabo no. 1.
• After a two year wait, the land claim case continues. In May 1989, the Supreme Court travels to the Torres Strait to hear more evidence.
• In November 1990, the Supreme Court of Queensland hands its decision to the High Court of Australia. Justice Moynihan of the Supreme Court disputes Eddie Mabo’s evidence, declaring that Eddie was not adopted by Benny and Maiga Mabo. Moynihan denied Mabo’s claims to land.
• The legal issues raised by this process can be argued in the High Court. Hearings begin in May 1991.
• The High Court delivers its verdict on 3 June 1992 in favour of Mabo and his fellow plaintiffs. This becomes known as Mabo no. 2.
• This High Court ruling overturns the legal doctrine of terra nullius and recognises that
  —the community of Murray Island had a valid system of land ownership that predated white settlement
  —Australia’s Indigenous peoples owned traditional land under native title
  —native title continues to the present day, unless extinguished by the Crown
  —native title may be extinguished if the landholders lose all connection to their lands and cease to observe their traditional laws and customs.

Who’s who?
Here are some of the key names you’ll come across on the CD-ROM.

The Mabo case: plaintiffs, the legal team, supporters and family
Melissa Castan—member of the Mabo legal team
Ron Castan—senior barrister representing Eddie Mabo and fellow plaintiffs in the Mabo case
HC (Nugget) Coombs—Chair of Council for Aboriginal Affairs 1967-76 and one of the original supporters of the Mabo claim
Barbara Hocking—barrister representing Eddie Mabo and fellow plaintiffs in the early stages of the Mabo case

Bryan Keon-Cohen—barrister representing Eddie Mabo and fellow plaintiffs in the Mabo case

Robert Lehrer—member of the Mabo legal team

Greg McIntyre—solicitor representing Eddie Mabo and fellow plaintiffs in the Mabo case

Sean McLaughlin—member of the Mabo legal team

Flo Kennedy—an Islander advisor to the Mabo legal team

Noel Loos—Eddie Mabo’s biographer and friend

Benny and Maiga Mabo—Eddie Mabo’s adoptive parents after the death of his mother. It was their land on Mer that Eddie Mabo claimed.

Bonita Mabo—wife of Eddie Mabo

Mabo family—the children of Eddie and Bonita Mabo are Eddie Jnr, Maria J essie, Bethel, Gail, Mal, Malita, Celuia, Mario, Wannee and Ezra

Eddie Mabo—leading plaintiff in the Mabo legal case

Father Dave Passi—plaintiff in the Mabo legal case

Sam Passi—witness in the Mabo legal case

James Rice—plaintiff in the Mabo legal case

Celuia Salee—original plaintiff in the Mabo legal case

Robert and Poipe Sambo—parents of Eddie Mabo

Dr Nonie Sharp—anthropologist, one of the original supporters of the Mabo claim and an adviser to the Mabo legal team

Names of note

Walter Baldwin Spencer—Australian anthropologist, noted for his work around the turn of the 20th century with the Aboriginal peoples of Central Australia

John Batman—colonial explorer who, in 1835, made a treaty with a group of Aboriginal men on the site of what would later be Melbourne

AC Haddon—anthropologist from Cambridge University, England who published a six-volume report on the Torres Strait Islands in the early 1900s.

Malcolm Fraser—prime minister of Australia 1975–83

Robert Hawke—prime minister of Australia 1983–91

John Howard—prime minister of Australia 1996–

Paul Keating—prime minister of Australia 1991–96

William McMahon—prime minister of Australia 1971–72

Professor Henry Reynolds—historian and author on Indigenous issues

Gough Whitlam—prime minister of Australia 1972–75

Other cases

Gove—a land rights action by the Yolngu people of Yirrkala in 1971. It was the first case brought by Aboriginal people that argued Indigenous Australians should be accepted in Australian law as the rightful owners of their traditional country. It was unsuccessful.

Wik—the first native title judgment delivered by the High Court for mainland Australia.

The judges

Justice Brennan—High Court

Justice Blackburn—Northern Territory Supreme Court judge, ruled on the Gove case

Justice Dawson—High Court

Justice Deane—High Court

Justice Gaudron—High Court

Justice Gibbs—Chief Justice of the High Court when Mabo commenced

Justice McHugh—High Court

Justice Mason—Chief Justice of the High Court during Mabo no.2 and from 1987 in Mabo no.1

Justice Moynihan—heads the Supreme Court of Queensland hearing into the Mabo legal case to establish the facts of the case

Justice Toohey—High Court

Justice Woodward—High Court

Eddie Mabo

Photo: Jim McEwan, The Age
The significance of Malo

Mabo, the agud or mythical god who came to Mer (pronounced Mare), is represented by the octopus. The image has been used for the main menu of Mabo—The Native Title Revolution. The story of Malo is told as a graphic animation at the start of the Mabo CD-ROM. This animation is also the first topic in the Mer subject strand.

Malo’s law underpins traditional Meriam culture. It is woven into the rules of land ownership, responsibilities and use as well as religious beliefs and rituals. These cultural traditions survived both the arrival of the London Mission Society (which introduced Christianity in 1872) and State and Federal legislation. They were presented as part of the evidence for the defence in both Mabo cases.

The law of the Meriam, known as Malo’s Law, comes from the sea. According to myth, Malo crossed the Torres Strait from the northwest, firstly as a whale, before transforming himself into many sea creatures. On arriving he took the form of an octopus, was acknowledged as a supernatural being and became the god of the eight clans of the Meriam.

Malo, or Bomai, which is his secret and more sacred name, established the law which decreed that clans keep to their own paths, ‘swim with their own kind’, sow their lands and conserve the seas.

—from Malo-Bomai topic in Mabo—The Native Title Revolution

Features and uses

Mabo—The Native Title Revolution is an extensive and many layered resource so it is important to work through the tutorial on the Install CD-ROM. The CD-ROM packaging contains more information on how to use and navigate the CD-ROM as well as details on the content, authors and installation. This information is also available online at www.MaboNativeTitle.com

Seeing and listening

The most important and engaging features of this multimedia resource are the use of visual images, voice over and music. Seeing and listening makes concepts more accessible than the use of print texts alone. The use of legal terms in The Case and Native Title subject strands and the complex argument underpinning the Land Rights strand can be more easily understood in context when there is a visual representation. Students hear the word dispossession, learn its spelling and use in context, and see a number of powerful pictures and photos illustrating it and the cruelty and humiliation which accompanies it.

A multimedia learning tool

The topics within the subject strands can be played almost continuously, creating a sense of motion and film. The use of documentary footage in the Mabo strand and in the information drawers allows students to see and hear Eddie Mabo and other key figures. The tools encourage active participation and use. When you watch a topic, the boatman at the bottom of the screen lets you fast forward and rewind, a pause button lets you stop the topic and the basket lets you save items you may need later. Having this opportunity to replay a segment allows students time to make notes, to decide whether this is a topic they want to save, and to understand difficult language in context.
Designing a unit of work
You’ll need to set Mabo—The Native Title Revolution within a curriculum framework. It may be:
• a Key Learning Area
• the curriculum documents from your State/territory, or
• the National Goals for Education from the recent Ministerial Council on Education, Employment, Training and Youth Affairs.
You might begin to design the unit of work using an aim or objective, a particular learning model or learning outcomes. The following examples provide some possible beginnings for unit development and design.

Example 1
Under Section Three of the National Goals you’ll find the following statement:
Schooling should be socially just, so that: all students understand and acknowledge the value of Aboriginal and Torres Strait Islander cultures to Australian society and possess the knowledge, skills and understanding to contribute to, and benefit from, reconciliation between Indigenous and non-Indigenous Australians.

Example 2
Teaching Aboriginal Studies edited by Dr Rhonda Craven (Allen & Unwin, 1999). Contributors to this text for teachers include tertiary academics and teacher educators, Aboriginal educators and research officers and Aboriginal elders and educators. It states:
Teachers are a crucial link between the rhetoric of Reconciliation and the reality of a vision fulfilled. Their role is fundamental to the process because it involves taking the discussion into classrooms and allowing informed debate to flourish on Reconciliation.
A common mistake is to focus units on traditional societies. Such an inappropriate approach ignores the realities of our history and the consequences of our history for today’s Indigenous peoples.
See Chapter 14 ‘Developing Teaching Activities’ for a theoretical model which suggests a holistic way to explore present, past and future perspectives when developing Indigenous Australian Studies units of work.

Example 3
You can design a unit of work using learning outcomes. The materials lend themselves very well to the Studies of Society and Environment. However, they are equally relevant to the Arts, English, History or Media Studies.
• Describe the ideas, people or events which changed a society. (SOSE)
• Explain peoples’ motives and actions from various perspectives. (SOSE)
• Explain how different factors influence an individual's identity. (SOSE)
• Describe features of the Australian political and legal systems at local, state and federal levels. (SOSE)
• Make and present media productions or dramatic works which explore complex issues, ideas and feelings. (The Arts/Media, English)
• Read a computer-generated text on an issue (such as land rights), examining point of view and selection, omission and use of evidence, and attempt to evaluate some of the arguments. (English, History, Information Technology)
• Use a variety of text types to write about challenging ideas and issues. (English)

The language you use
As you begin to develop a unit of work you’ll need to think about your language choice, your own understanding of Australian history and its starting point, as well as contemporary perspectives about Aboriginal and Torres Strait Islander peoples.
When making conscious decisions about the use of words and accompanying values such as ‘invasion’ or ‘white settlement’, ‘dispossession’ or ‘occupation’ or the more neutral ‘pre and post European contact’, you may wish to talk through such concepts with other teachers in your faculty, department or school.
Reference to the curriculum materials and the advice of Aboriginal and Torres Strait Islander Education Units within your state or territory may assist you.
Selecting a starting point

Pre-teaching

Mabo—The Native Title Revolution deals with many complex concepts such as reconciliation, hearsay and litigation. There may also be a need to pre-teach legal language (eg plaintiffs, justices) and processes (eg court structure, the absence of juries).

Pre-teaching activities can be easily constructed and are very useful for English as a Second Language students in particular. Examples include:

- constructing various sentences that incorporate a difficult word or concept
- predicting the meaning of the word
- matching keywords to pictures
- asking groups to role-play keywords

When you play a subject strand on the CD-ROM, stop and replay parts that may be difficult. List the heading of the topic you are watching and a word or phrase for each point, constructing an advanced organiser which highlights some difficult language and concepts. You may like to get students to go through this exercise too.

Starting points—selecting strands

There’s so much material in Mabo—The Native Title Revolution that you’ll need to work through the tutorial and then skim through the subject strands to find out what’s there and what you want students to use. There is considerable overlap in the content so selection is important. On the other hand, there is plenty of scope for extension activities; the repetition of content through a different focus could be very useful.

Once you’ve identified the learning outcomes and where this unit of work fits in your yearly program, you need to choose a strand with which to begin.

Both Mabo and The Man strands could form the foundation for exploring concepts such as the nature of justice, the process of democracy, taking a stand, or belonging.

Any one of the strands Native Title, Land Rights or Terra Nullius could be the starting points for an historical and political overview leading on to the issues of reconciliation or of land rights in Australia.

Activity suggestions

Subject strand: Mer

Mer is one of the three Murray Islands. It is Eddie Mabo’s birthplace and the home of the Meriam people. This strand provides an insight into Meriam history and culture, which was crucial to the success of the Mabo case. The Malo story is included here.

Suggested activities

- Find out where the Murray Islands are and draw a map and timeline summarising major events in the history of the Meriam people. (See also the Map and Timeline on the CD-ROM.)
- Write a letter to a friend overseas describing what you learnt in your two-week holiday on the island of Mer or design a travel brochure describing the island and the people living there.

Subject strand: The Man

The Man is a biography of Eddie Mabo, the leading plaintiff in the Mabo case. It traces his development as a person, activist and significant contributor to the rights of Indigenous peoples. It shows a person both ordinary and extraordinary; a man capable of great commitment, sacrifice and generosity. Eddie Mabo is not presented as traditional hero or ‘great man’. While sympathetic, the commentary includes some critical evaluations that allow a more real and balanced view. He and the other plaintiffs provide a model for young people in demonstrating that individuals can and do take on the system to right injustices.

Suggested activities

- Identify all the plaintiffs in the Mabo case and other people who played an important role in bringing the issue of land rights in the Murray Islands to court (Could be compiled from other sources as a pre-teaching activity or from the CD-ROM and further research).
- Design and produce a slide show or a presentation using Powerpoint or the CD-ROM for a younger audience to give an overview of the contribution of Eddie Mabo and the other plaintiffs to Australian society.
- Research and write a short documentary film script (including a storyboard) about a significant contribution to the community by a member of your local community. Older students could compare the selected person with a person who is significant to them.
- Invite some members of a local Indigenous community to give their views on Eddie Mabo and other Indigenous leaders and/or the importance of active participation in Australian society.
Extension activities for The Man

**Activity 1**

**Focus questions**
What sort of man was Eddie Mabo?
What did he and the Mabo case achieve?

**Major task**
How is Eddie Mabo seen by others?
Ask students to construct their view of Eddie Mabo.

**Lead-in activities**
A preliminary activity might include two or three sessions in the library collecting information and evaluating other views about the Eddie Mabo and the Mabo case.

The internet may provide more information than other texts—see www.MaboNativeTitle.com

**Steps in the process**
Ask students to listen to all of The Man subject strand once.
For the second viewing, ask students to list the descriptions of Eddie Mabo in note form.
For the third viewing, use the data chart like the one below to organise and compare the notes.

**Activity 2**

**Lead-in activity**
Discuss the multiplicity of roles we all play, how we are defined in terms of place, family origin, community, cultural and religious traditions, personality etc and how people grow and change in response to their experiences and the people they meet.

**Major task**
Identify the many roles Eddie took on in his life.
As there are so many descriptions, you may wish to divide students into groups, assign a number of topics and complete the jigsaw with a combined list on the board or with a data chart. Alternately, students could collect and save the descriptions in the basket as part of a visual presentation.

*Here’s a list to help you*
Eddie the person, son, Torres Strait Islander, young man, fisherman, husband, father, communist, wharfie, branch secretary, artist, educator, director, partner, gardener, guest lecturer, friend, reader, learner, activist, self-educated man, thinker, philosopher, risk taker, leading plaintiff, stirrer, leader, plaintiff, unemployed, crusader, battler, sailor, student, patient, winner, symbol, reformer, fighter for equal rights, a representative of Indigenous people, hero.

<table>
<thead>
<tr>
<th>The role or description of Eddie Mabo</th>
<th>Include the action(s) referred to or the context</th>
<th>Explain the terms used (use both the context and the dictionary)</th>
<th>Compare with the views of other people (as expressed in sources collected in the library)</th>
</tr>
</thead>
<tbody>
<tr>
<td>educator</td>
<td>established a school for...</td>
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<td>plaintiff</td>
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Subject strand: The Case
A history of the Mabo case from its inception in Townsville in 1981 to the High Court victory in 1992, which recognised native title and rejected the concept of terra nullius.

Suggested activity
• Design and present a film, video or multimedia presentation (perhaps using the baskets on the CD-ROM) that explores the legal impact of the Mabo case.

Subject strand: Mabo
An edited and updated version of Land Bilong Islanders, a documentary made during the Mabo case. You can watch it as a whole (choose Mabo Full Screen Movie) or as a series of short topics. The film takes you to Mer to hear from Islanders directly. The traditional system of land ownership, rights and responsibilities are explained, as is the impact of the past on contemporary beliefs and culture. The plaintiffs outline their history and the Mabo case. The narrator sums up the High Court decision and its impact, particularly on politicians.

Suggested activities
• Select four or five topics where people talk direct to the camera and note the difference between these accounts and other accounts or sources. For example, note Flo Kennedy's comparison with old ways of dealing with conflict and the use of the legal system, Father Passi's observations and James Rice's comments.
• Consider the problems associated with how land ownership is defined.
• How does using film help get the message of connection to land or place across to viewers? To help answer this, analyse spoken and visual text.
• Ask your parents and family friends about having a place or home of their own and what importance they place on their connections to certain places.

Subject strand: Native Title
One of the most important aspects of the Mabo judgments was to recognise that native title predates the assertion of sovereignty by the British. The Native Title strand considers the common law principle of native title and goes on to explore the legal ramifications of the Mabo case and tease out the many issues associated with land rights. It examines successful native title claims across the country and looks at who can make a claim and how.

Suggested activities
• The first five topics give a number of definitions of native title including Justice Brennan's:
so long as the peoples remain an identifiable community, the numbers of whom are identified by one another as members of that community, living under its laws and customs, the communal native title survives to be enjoyed... (Mabo v Queensland (No2) (1992) 175 CLR 1, at p61)
Collect and save in the basket the different definitions of native title used in the first five topics and construct a working definition.
• Debate the issue of native title or write a story for the Townsville Bulletin of someone's involvement in native title actions.

Subject strand: Land Rights
The Land Rights subject strand begins with a brief explanation of the Dreaming and the connection between Indigenous peoples and the land, broadening the focus on Murray Island to other parts of Australia. It continues with European occupation and the evolution of the land rights movement and includes commentary on the major land cases of the 1970s and 1980s.

Suggested activities
• Construct a presentation that describes some meanings of the land for Aboriginal and Torres Strait Islander peoples who have continuously occupied that land, and compares these meanings to those of another community with a different history (perhaps Indigenous Australians living in big cities, recent arrivals from Asia, Europe or the Middle East, or farmers in rural Australia).
• Construct a multimedia graphic comparing land rights in Australia with Canada or the United States.
• Write a speech for an Indigenous representative in the House of Representatives arguing for the inclusion of custodianship or prior occupation in a future preamble to the Constitution.

Subject strands: Terra Nullius
Terra nullius means ‘land belonging to no one’. This strand investigates how this centuries-old legal principle was applied to the take-over of Australia and its significance to the Mabo case. It discusses the historical bases for the conquest and occupation of other nations and introduces (European) international law.
Suggested activity

- Research and construct a visual representation (eg series of sketches, slide show, collage, CD-ROM basket presentation) showing the occupation of Australia by the British.

Timeline

By ordering topics chronologically, the timeline provides a different way to look at some of the same topics that appear in the subject strands of the CD-ROM.

Suggested activities

- Investigate the possible reasons for beginning the timeline in Mabo—The Native Title Revolution at 2000 BC.
- List the symbols used in the timeline and explain their use in this context. Older students could go on to analyse the intended purpose and compare with other possible effects.
- Compare the timeline used in this CD-ROM with those in print texts.
- Construct a graphic timeline of Eddie Mabo’s life which includes his biographical details and the major influences on him (see also The Man subject strand).

References


Other resources

School materials and other resources produced by the Curriculum Corporation for the Discovering Democracy Project. See www.curriculum.edu.au/democracy

Discovering Democracy Project’s Civics and Citizenship Education website with materials and resources used in the two tertiary subjects Civics and Citizenship Education and Citizenship and Australian Democracy provided by distance education through Open Learning Australia. See http://www4.gu.edu.au/ext/civics/index.htm

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Mabo—The Native Title Revolution website
http://www.MaboNativeTitle.com

A website has been created as part of the Mabo—The Native Title Revolution project. As well as enabling updates of the CD-ROM, the site contains a database with additional material, advice about using the CD-ROM and website, and links to other related sites. You, as a user, can contribute to this database.

Film Australia’s website
http://www.filmaust.com.au

Film Australia’s website lists documentaries and teacher resources on Australian studies, history, culture and politics. There is an extensive collection of programs dealing with Indigenous issues including the film Mabo—Life of an Island Man that forms part of Mabo—The Native Title Revolution.

You can also print off teachers’ notes to many Film Australia documentary programs, order videos online and find out about television broadcasts.
Caution

Mabo—The Native Title Revolution includes images of many Aboriginal and Torres Strait Island people, both living and deceased. Care should be taken when showing this program to Indigenous peoples so as not to cause distress to those related to the deceased. No secret-sacred or otherwise restricted images or information have, to the producers’ knowledge, been included in this program.