



Index and Introduction



AUSTRALIAN
CONSTITUTION
CENTRE

Unit 15: The rights of Aboriginal and Torres Strait Islander peoples in Australia – Year 10 - C & C Strand: Citizenship, Identity & Diversity

Topic 10.2: Indigenous Rights and the Australian Constitution

Curriculum: Year 10: The role of the Parliament and the High Court of Australia in protecting rights under the Constitution, common law, and through federal and state statute law ([AC9HC10K03](#))

- understanding the relationship of Aboriginal and Torres Strait Islanders peoples with their lands and waters both prior to 1788 and continuing after colonisation occurred;
- understanding how the doctrine of *terra nullius* was overturned by the High Court, how native title was recognised as part of the common law and how the *Native Title Act 1993* was enacted to give those common law rights the protection of statute.

Area/Questions and takeaways

1. How have the legal rights of Aboriginal and Torres Strait Islander people changed over time?
2. What role has the High Court played in recognising those rights?
3. What are the competing meanings of sovereignty?
4. What was the doctrine of *terra nullius* and why did the High Court overturn it in the *Mabo* decision?
5. What is the difference between land rights and native title?
6. Why were there two *Mabo* cases and what did the High Court decide in each of them?

Goal:

- To understand land rights, common law native title and the *Mabo* case. In this lesson students learn the history of land rights and native title for Aboriginal and Torres Strait Islander peoples. Students achieve this by watching videos, close reading and discussion.
- To understand the role of the courts in determining the rights of Aboriginal and Torres Strait Islander peoples, including the early case of *Cooper v Stuart*, how this case operated as a precedent that limited the findings of Justice Blackburn in *Milirrpum v Nabalco*, and how the High Court was ultimately able to overturn the precedent in the *Mabo* case.

Achievement Standard:

By the end of Year 10, students compare and evaluate the key features and values of systems of government and analyse the role of the High Court. Students evaluate a range of factors that sustain democratic societies.

When researching, students evaluate a range of questions to investigate Australia's political and legal systems and critically analyse information gathered from different sources for relevance, reliability and omission. They account for and evaluate different interpretations and points of view on civics and citizenship issues. When planning for action, students take account of multiple perspectives and ambiguities, use democratic processes, and negotiate solutions to an issue. Students develop and present evidenced-based arguments incorporating different points of view on civics and citizenship issues. They evaluate ways they can be active and informed citizens in different contexts.

Prior Learning/revision required:

- **Unit 2: Topic 4.2:** Terra Nullius: TRD 9 and Lesson/Activities Five. Includes introduction to land rights, the *Mabo* case and native title.
- **Unit 4: Topic 5.2:** TRD 20 and lesson/activities: Right to Vote – Aboriginal People and Torres Strait Islanders. TRD 23: The story of Vickie Lee Roach and testing the right to vote of prisoners.
- **Unit 11, Topic 9.1:** TRDs 93 & 94: Successful Referendum: the 1967 Aboriginal referendum (teacher & student resource) and lessons/activities.
- **Unit 11: Topic 9.1:** TRDs 101 & 102: and lesson/activities: Referendum on Indigenous Constitutional Recognition (Student & Teacher Resources).
- **Unit 14: Topic 10.1:** The Jurisdiction of the High Court of Australia.

Teacher Reference Documents (TRDs) and Activities/Lessons:

- **TRD 129: Indigenous law pre -1788 - Extended**
- **TRD 130: Land rights and Native Title**
- **TRD 131: The *Mabo* Case**
 - Lesson/Activities: Land rights, Mabo and native title.

Special First Nations Peoples Disclaimer: In some First Nations communities hearing recordings, seeing images or the names of deceased persons, may cause sadness or distress and, in some cases, offend against strongly held cultural prohibitions. The AIATSIS website has more information.

Special Terminology First Nations Peoples: Teachers may note that much of the above discussion refers to Aboriginal people, rather than 'Aboriginal and Torres Strait Islander peoples'. This is because the original terminology, including in the 1960s, did not make this distinction. Teachers should take care to contextualise this historical usage and contrast it with the terminology used more accurately today.

It is often said that Aboriginal and Torres Strait Islander people were not counted in the census until after 1967. That is not true. They were counted from the very first census if they lived near settlements - just not if they were in remote areas that the census officials did not reach. The census figures in the first part of each census excluded what they described as 'full-blood' Aboriginal people, but included all other Aboriginal people. 'Full-blood' Aboriginal people were, however, included in tables at the end of each chapter in the census. Teachers should be aware that this terminology used in the census is now viewed as offensive and may be regarded as disturbing to students. Accordingly, teachers may wish to be cautious in

its use and careful to contextualise it if using it in class. Census reports contain a wealth of material about the lives of Aboriginal and Torres Strait Islander people, but the description and categorisation of that information would need to be contrasted with the attitudes of today.

In Unit 2, Teacher Reference Document (TRD) 10, in discussing 'when the British arrived in 1788' the First Nations Peoples name of Warrane' (pronounced Wah-rang) has been added. In other units when teaching about place names, teachers are likewise encouraged to use the First Nations Peoples' name.

