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Native Title is not 'land rights'

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Indigenous people do not perceive land in the term of property and title, they belong to the land and with that belonging comes a responsibility to protect the land. Land rights are in fact a birth right.

By

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Land is intrinsic to Indigenous culture and identity. We are raised to understand that we belong to the land, not that it belongs to us, and with that belonging comes a responsibility to protect the land which is why Indigenous people pursue land rights following our dispossession – because land rights are in fact our birth right.

The current state of 'land rights' in Australia makes that task near impossible with 'land rights' being eroded over time in favour of destructive commercial activities which destroy the land we are culturally bound to protect.

What the government considers 'land rights' and what Indigenous people consider land rights are two materially different notions.

At the time of invasion, the British Crown claimed the land under a racist application of the doctrine of terra nullius. In 1768, Lieutenant James Cook was instructed:

"You are...with the consent of the natives to take possession of convenient situations in the country in the name of the King of Great Britain, or, if you find the country uninhabited take possession for His Majesty..."

In 1770, Cook attempted several landings all along the eastern coast of Australia and on multiple occasions, the landing parties were repelled. Cook wrote in his journal in 1770:

"..from what I have seen in the Natives of New Holland, they may appear to some to be some of the most wretched people on Earth.."

And so began the racist lie of terra nullius - which dispossessed a people from their land which they were culturally bound to protect and perform ceremony on and conserve.

Indigenous people do not perceive land in the title and property value sense but rather as a provider which in turn needs to be protected.

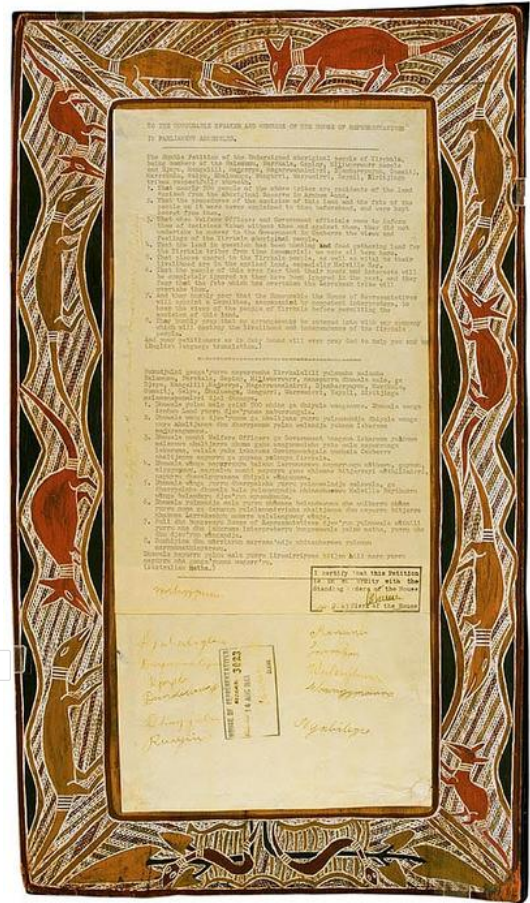
It was not until over 200 years later that, following the High Court's [Mabo](#) [<file:///C:/Users/danieg/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.Outlook/ONOMXX3K/V>] decision in 1992, the notion of terra nullius was found by the High Court of Australia to be a lie that ignored the presence of people before European invasion. There was a great hope that this would result in land rights for Indigenous people, particularly following Paul Keating legislating the [Native Title Act 1993](#) [http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/] (Cth), which was intended to acknowledge and protect Indigenous connection to land.

Therein lies the problem, however, that not only is an Indigenous concept being subjected to European legal constructs but that the very piece of legislation intended to protect connection to country by those that enacted it, has been at the whim of every government since to whittle it down to make way for mining and other commercial activities.

Indigenous people do not perceive land in the title and property value sense but rather as a provider which in turn needs to be protected. Animals were hunted conservatively, plants used sparingly to ensure they would regenerate and ceremony demonstrated respect for land and family.

The modern land rights movement dates back to 1963 when on 13 March the Australian government took more than 300 square kilometres of land from the Yolngu people in Arnhem Land so mining company Gominco could extract bauxite. As so often was the case, and remains so, work started without talking to the people about their land. The Yolgnu people from the settlement Yirrkala in north-east Arnhem Land presented the Australian Parliament with a bark petition, commonly known as the [Yirrkala bark petitions](#) [https://en.wikipedia.org/wiki/Yirrkala_bark_petitions] , protesting to have their land and their rights returned.

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The fight of the Yolgnu people didn't stop there, they again petitioned the government in 1971 in the case of [Milirrpum v Nabalco Pty Ltd](https://en.wikipedia.org/wiki/Milirrpum_v_Nabalco_Pty_Ltd), commonly known as the Gove land rights case, because of the mining activity taking place on their land without their consent. The Northern Territory Supreme Court acknowledged the Yolgnu people's ongoing relationship with the land and the complex system of laws used by the people to govern the land, but lost the case because the Australian courts were still bound by discriminatory legal principles that denied Indigenous peoples had laws and rights in relation to land.

In this same period, what is referred to as the [Wave Hill Walk Off](https://en.wikipedia.org/wiki/Wave_Hill_walk-off) to protest working conditions and payment – soon became about much more. In August 1966 Vincent Lingiari, of the Gurindji people, led his people to strike but then argued that the land they were working on in perilous conditions was in fact the land of his people and, rightly so, he demanded the return of the land.



After years of struggle and lobbying, Lingiari was famously given back his land back by Prime Minister of Australia, Gough Whitlam in 1972. Following the failure of the Gove Lands Rights case, the Whitlam Labor Government instigated an inquiry into Aboriginal land rights (known as the Woodward Commission), which eventually led to the Fraser Liberal government passing the [Aboriginal Land Rights \(Northern Territory\) Act 1972](http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/) [http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/] which did have good intentions of returning land to the Indigenous people of the Territory and a large portion of the land has been returned.

The federal government intervention with the [Native Title Act](http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/) [http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/] (although well intentioned at the time it was enacted) however, has undermined all of the progress made with land rights.

Even if native title is granted, it is not certain and can be extinguished by freehold title and most leases over the land.

In order to understand how Native Title fails to provide 'land rights' we must understand what it does provide:

- Right to 'share' the land with other people or parties with an interest in the land; and
- It may also provide right to hunt, conduct ceremony and have a say over what development can occur on the land.

This is not the case with all Native Title claims and native title holders, as the conditions are largely set by the government body that administers native title. To succeed in a claim, the threshold is demonstrably obstructive given that applicants need to prove continuous connection to land that has, for the most part, been forcibly taken. Even if native title is granted, it is not certain and can be extinguished by freehold title and most leases over the land.

Although, the government has a duty to notify any native title holders of proposed mining exploration, it can fast track approvals to mine on native title land if it deems it will have a 'minor impact' on Native Title. If the fast track is used, the company does not have to negotiate with native title holders and can just carry out the exploration. If the government decides the fast track does not apply, the company needs to negotiate (or talk) with Native Title holders about its plan.

Indigenous people do not want to be arrested for protesting the destruction of country by mining companies.

The Native Title process is a fraught one for Indigenous people; there is a sense of being forced to participate in a mechanism and process which does not provide the land rights that are culturally sought but rather operates as a 'legal' means of dispossession in its application given that there is no exclusive use or ownership of the land, it remains subject to governmental decisions and whims with respect to mining and use so the very nature of land rights to Indigenous people – the right to protect country and perform ceremony – is undermined by Native Title.

Indigenous people do not want 'title' to land. Indigenous people want their rights returned. The right to protect country which means that we can banish mining companies and their destructive practices from their lands. Indigenous people do not want to be arrested for protesting the destruction of country by mining companies. Indigenous people do not want to be told they're trespassing when visiting sacred sites to perform ceremony.

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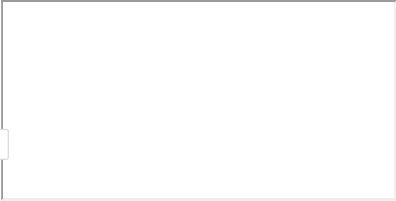
Native Title: What does it mean and why do we have it?
The Native Title Act was first created 23 years ago and marks a historic moment in Australian law that changed the face of our land rights system.

Native Title is the mechanism [\[http://www.sbs.com.au/nitv/the-point-with-stan-grant/article/2017/04/18/mabo-lawyer-changes-native-title-act-could-enable-projects-adani-mine \]](http://www.sbs.com.au/nitv/the-point-with-stan-grant/article/2017/04/18/mabo-lawyer-changes-native-title-act-could-enable-projects-adani-mine) that the government is using to allow the single largest and most destructive mine in Australian people to proceed despite a [legitimate Native Title claim \[http://wanganjagalingou.com.au/our-fight/ \]](http://wanganjagalingou.com.au/our-fight/) and community outcries against it proceeding.

The recent changes to the Native Title Act are demonstrative that Native Title is simply a governmental instrument used at whim to achieve dispossession through 'legal means' with the government [fast tracking changes to pave the way for the Adani mine to proceed \[http://www.theaustralian.com.au/national-affairs/adani-coal-mine-malcolm-turnbull-moves-to-change-native-title-laws/news-story/a9c176fc41a7af1363dca77ef23271b4 \]](http://www.theaustralian.com.au/national-affairs/adani-coal-mine-malcolm-turnbull-moves-to-change-native-title-laws/news-story/a9c176fc41a7af1363dca77ef23271b4) and ameliorate mining interests against the traditional custodians of the land who are trying to protect country against what is a proven environmentally catastrophic mining company.

Indigenous Land rights cannot be achieved – and are in fact undermined – by Native Title. Native Title is not land rights. It is essential that the government understands that the constant colonial legal constructs undermine cultural cohesion in this country, because it oppresses and further dispossesses Indigenous people.

Connection to Country tells the story of mining industries threatening the the sacred sites and ancient rock art of majestic Pilbra region. Part of NITV & SBS' [#YouAreHere \[https://www.sbs.com.au/ondemand/program/you-are-here \]](https://www.sbs.com.au/ondemand/program/you-are-here) series airing on Sunday, 6 August at 8.30pm on NITV Ch. 34



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Senator McCarthy: Government's proposed native title ammendments 'disrespectful to Traditional Owners'
The Turnbull government has suffered an embarrassing defeat in the Senate after Labor, the Greens and crossbenchers scuttled its attempts to ram through changes to Indigenous land rights.

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