WIK VS QUEENSLAND

THE DAY WIK WON THE BATTLE BUT LOST THE WAR

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http://theeducationshop.com.au

 ISBN: 978-1-76061-182-8

AUSTRALIAN TEACHERS OF MEDIA

A STUDY GUIDE BY
ROBERT LEWIS

CONTENT HYPERLINKS

OVERVIEW

Wik vs Queensland (Dean Gibson, 2018, 84 minutes) is a documentary record of the Wik people's involvement in and responses to the Commonwealth High Court decision granting Native Title in the Wik land rights case in 1996, and the subsequent Commonwealth legislation to dilute that decision.

On December 23, 1996, the High Court of Australia granted co-existence rights between the Wik People, pastoralists and mining companies in the landmark case Wik Peoples vs The State of Queensland. This nationally significant decision caused rumbles through the country, shaking up politics, dividing Aboriginal leaders and causing a national media frenzy.

Behind the case, a young Noel Pearson worked closely with the elders and custodians of the Wik Nations of Cape York, far north Queensland to lay legal claim over native title access for the group of first nations located in the Cape York Peninsula. Their case was built around the wonderfully rich and insightful document known as the *AAK*, containing Wik lore, their sites, history, land, waters and their intimate and intrinsic connection to country.

Post Mabo, the result in favour of the Wik claim by the High Court led to one of the biggest debates in Australian history as conservative commentators raised fears about perceived threats to 'suburban backyards' from native title claims. But no-one asked the Wik people what they felt, until now.

Looking back on this crucial moment in history, much can be learned from the Wik decision and the way that Australia chose to acknowledge, understand and respect Aboriginal people. Even today, at the heart of the issue, is the continued systematic failure of successive Governments to deliver to Aboriginal Australia.

December 23, 1996, should have been a time for celebration for the Wik people, Noel Pearson and many of the other key players in this victory. Instead, they were branded greedy and treated as the enemy. Nearly a quarter of a century on, *Wik vs Queensland* takes us inside the High Court's decision and subsequent events through the eyes of Wik traditional owners, and our nation's political, judicial and Aboriginal leaders. With unique access to never before seen archive footage Wik vs Queensland transports the audience back to this momentous period of our nation's history and the currency it still holds today.

CURRICULUM APPLICABILITY

Wik vs Queensland is suitable for use with senior secondary students (years 9-12) in:

- Australian History (colonial history, Aboriginal rights),
- Legal Studies and Civics and Citizenship (courts, legislation and Aboriginal land rights).

The film will help students address these issues:

- Indigenous people before colonial contact
- The role of land in Indigenous culture
- Colonial changes to Indigenous land and activities
- The imposition of British laws on Indigenous people
- The role of courts and governments in Indigenous land rights
- The role of Indigenous people in pursuing land rights

USING *WIK VS QUEENSLAND* IN THE CLASSROOM

The film is a dense one with extracts of interviews with many key players. It specifically focuses on the Wik people's voice in the process that led to the achievement of native title rights to pastoral leases, and the subsequent limitation on those rights through the amended Native Title Act.

Students will need to understand the sequence of historical events which are the context for the events and ideas being focused on in the film. This context and sequence are:

The Wik people have lived in their area of Cape York for possibly 60 000 years.

They developed a form of 'ownership' of the land, involving the need to care for it.

After 1788 the British invaders claimed ownership and control of that land.

They created a set of different types of land title or ownership, including leasing out large areas to pastoralists.

The state of Queensland had control over land ownership until 1967 and made laws about what could be done on those pastoral leases.

The Mabo case decided that the basis of the British legal claim to Australia, which they identified as the legal principle of 'terra nullius', was mistaken; and the subsequent 'native title' legislation to give land rights to Indigenous people did not say what native title rights existed for Indigenous people on pastoral leases.

Through the inception of the Cape York Land Council The Wik people organised to challenge Queensland's laws about pastoral leases and native title rights, and establish their own Native Title claim to their land.

The High Court ruled in the Wik people's favour, that pastoral leases did not extinguish native title, and that both pastoralists and local people had shared rights on pastoral leases. This decision affected all Native Title Rights in Australia not just Cape York.

The Commonwealth Government diluted this decision through the 10-point plan that became the basis of changes to native title legislation, and reduced the rights of native title claimants to be involved in negotiations with mining companies on the land, in the form of Indigenous Land Use Agreements (ILUA'S).

The Wik people today have native title rights on pastoral leases and mining leases, but because of the amended native title legislation their rights on those leases are less than they were when the Wik court case was decided.

Students should follow these three steps in using the film in the classroom:

A. Students should look at the ***Before Watching the Film*** section (pages 5–12) which enable them to understand the historical background to the Wik case. This will ensure that they fully understand the context, and the specific issues being dealt with at all stages.

B. Then they should **watch the film** and answer the specific questions, referring where necessary back to the 10 Key Understandings.

C. Finally, students can answer the ***Bringing it Together*** questions at the end, using all the information and ideas presented in the film.

BEFORE WATCHING THE FILM

The film Wik vs Queensland, which you are about to watch, deals with a complicated series of events that led to the successful claim of Indigenous land rights, called native title rights, by the Wik people of Cape York.

By reading the following information and answering the associated questions you will be better able to explore the issues and ideas raised in the film.

UNDERSTANDING 1

Who are the Wik people?

The Wik people are a group of tribes in Cape York whose domain extends from the coastal outlets of the Holroyd River and the Watson River on the east coast, inland to the central highlands, for a distance of about 130 km.

http://www.cooktownandcapeyork.com/go/cape

1.1 Mark this approximate area on this map.

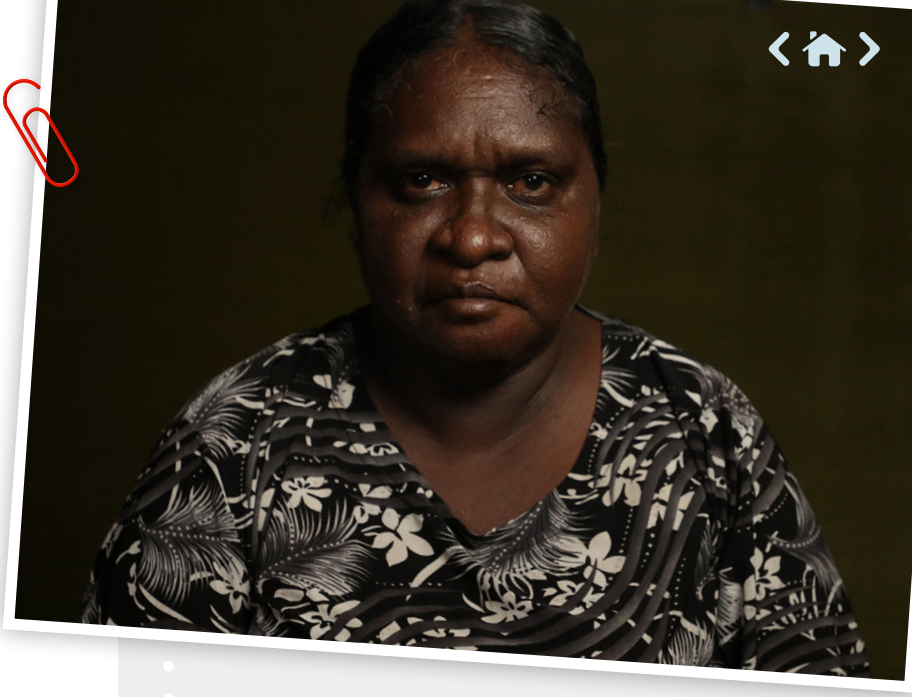
The Wik people in this area are the Wimmunkan, Wikanji, Mimungkum, Wikmean and Wikampama.

The Wik were the first Aboriginal people with whom Europeans made contact in Australia. In 1606 Dutch sailors from Willem Jansz's ship *Duyfken* clashed with them at Cape Keerweer (Dutch for 'Turn-Again'), with seven sailors being killed.

However, the remoteness of the area meant that the Wik avoided the main waves of colonial expansion in the nineteenth century, but when pastoralists finally arrived the Wik people were moved to government reserves and missions at Weipa, Mapoon and Aurukun between 1891 and 1904.

1.2 Mark these places on the map above.

1.3 In your own words, how would you describe the Wik people?



UNDERSTANDING 2

Did Indigenous Australians before 1788 'own' the land?

Before the arrival of Europeans in 1788, Aboriginal and Torres Strait Island people occupied the whole of what is now Australia.

Different tribes had their own recognised territories, and they used different areas during different seasons for food, water and shelter.

There were strict practices for managing and using the land effectively.

The land was not owned individually by members of the tribe — a whole area belonged to the whole group, and was used by them as a community. There were particular ceremonies which had to be carried out at particular places at special times.

Life was not perfect and ideal — there were sometimes conflicts, and groups would occasionally have to repel invaders from neighbouring tribes if necessary. But indigenous people had developed ways of living over thousands of years, exploiting and managing the land successfully and sustainably, and creating a well-ordered and fulfilling set of societies based on law and culture.

2.1 How was the land special to Indigenous people?

2.2 How are these ideas of land 'ownership', tribal management and personal obligation different from the idea of personal land ownership that the British brought with them?

2.3 What could happen to law and culture if the connection to land was disturbed?

UNDERSTANDING 3

Why and how did the British take over Aboriginal land?

When the British decided to settle New South Wales as a prison colony in 1788, they had three legal choices about how they could take control of the land from the indigenous owners. They could:

- invade the land, fight the Aborigines, and claim the area through conquest;
- make a treaty with the indigenous inhabitants, and negotiate with them to share the land; or
- just take over as though there was no-one who owned the land.

They chose the third option. They chose this because there did not seem to be any particular leader or 'king' with whom the British could negotiate. So Governor Arthur Phillip, in charge of the new colony, simply claimed that from now on all the land was owned by Britain — it was the Crown's land. This meant that the Crown (or government) could dispose of the land — such as by selling it to people to build their houses and farms, or renting or leasing parts of it out to people to graze animals.

By choosing this method, the British were saying that they did not accept the Aboriginal people's rights to their land. The Aboriginal people were therefore automatically dispossessed of their land and their rights to it.

In 1992 the High Court described this method of gaining control as applying the legal principle of 'terra nullius' — meaning 'no-one's land'. This principle did not deny that there were people living there, but that there was no recognisable system or form of ownership of the land.

3.1 Why would a British official in 1788 see the claiming of Australia as a justified and legal settlement?

3.2 Why would an Indigenous person at Port Jackson in 1788 see this as invasion?

UNDERSTANDING 4

How did 'terra nullius' affect the Wik people?

European settlement, or invasion, meant that many Aboriginal people lost their land, taken by the new settlers.

Both groups were competing for the same resource: land. The new settlers needed the land to graze their sheep and cattle and to grow crops. They drove off the native animals, especially kangaroos, and destroyed much of the native vegetation upon which the Aboriginal people's life depended. To the Europeans, the Aboriginal people were not using the land, and it was free for them to take.

Europeans introduced diseases to which the Aborigines did not have immunity, and this accounted for most Aboriginal deaths. In some cases Aboriginal people were attacked and killed by the settlers, and there were some cases where the Aboriginal people attacked and killed settlers.

As this happened, there came to be three main types of land regulation:

FREEHOLD LAND — this was land which the Crown (or government) had sold to people. The land became theirs alone. An example of this is land in cities and towns on which houses are built. A person owns this land, and nobody else can claim it.

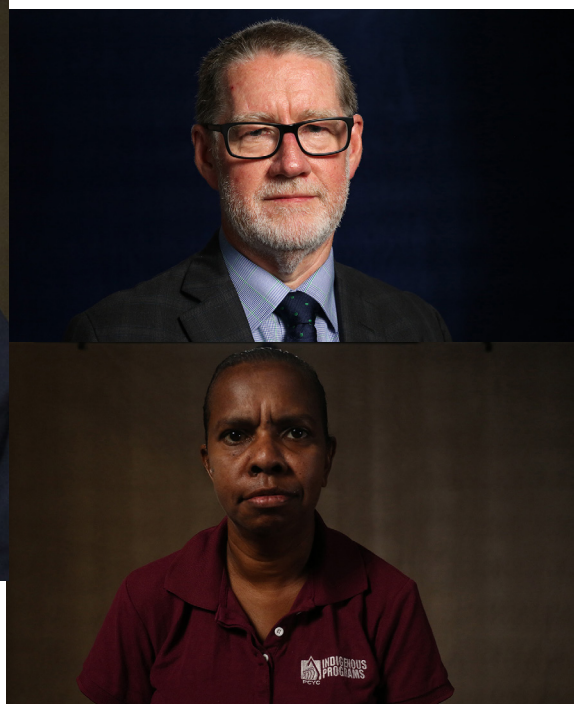
CROWN LAND — land which the government still owned, and which it had not sold or given or leased to anybody else. National Parks are a good example of Crown Land.

LEASEHOLD LAND — this was land still owned by the Crown, but which it had rented out or leased to people. Colonial Governments did this to encourage people to develop areas of land which they would not normally buy — areas, for example, which needed large acreage to provide feed for animals. The colonial (or state) government would set the terms of the lease. Usually this meant that a grazier could graze animals, but could also do other things that were needed for that pastoral enterprise to work — such as cut timber for fences, dig holes for dams, and grow food for their own use.

This is what happened to the Wik people's lands — large areas were granted as pastoral leases to graziers. The graziers did not own the land, but they could rent it and use it for a set period to graze their cattle.

There were also mining leases. In 1957 Comalco was given a lease by the Queensland Government over what is the largest bauxite field in the world, and the people at Mapoon were forcibly removed to Bamaga, while the area for living around Aurukun was reduced to a small area. There was no consultation or negotiation with the Wik people over the granting of this mining lease, and they received no compensation or mining royalties.

4.1 What would this dislocation and restriction of access to land mean for the traditional custodianship of the land?



UNDERSTANDING 5

Who controlled Wik land?

Up to 1901 the various states had their own governments, which could make laws for the people in their own states. In 1901 a new Commonwealth Government came into existence, and it could make laws for the whole of Australia in certain areas where it had been given the power by the Constitution. Land was not one of these areas, nor were Aboriginal matters.

However, in 1967 the Constitution was changed by a referendum, and this gave the Commonwealth power to make laws affecting Aboriginal and Torres Strait Islander people. In 1975 it passed the Racial Discrimination Act, which made it an offence to make laws which discriminated against any people because of their race. This law was particularly passed to protect Aboriginal and Torres Strait Islanders.

But land laws still stayed with the states. Several times Aboriginal people went to court to try and gain land rights based on their continuous occupation of the land and their dispossession by non-Aborigines since 1788, but in every case they failed — neither courts nor governments recognised their claim to land.

5.1 Why might the power to make land laws have stayed with the states after Federation in 1901?

5.2 How would the Racial Discrimination Act mean that new standards had to be applied to land decisions by a state government?

UNDERSTANDING 6

How did the Mabo case change this?

This situation changed dramatically in 1992.

In that year the Mabo case was decided in the High Court. Eddie Mabo claimed that he was the traditional owner of land on the island of Mer (or Murray Island), in the Torres Strait. He argued that the invasion of 1788 had not changed his right to the land. The land had been held then by his direct ancestors, and it had been passed a continuous and unbroken line to him.

The High Court agreed, and overturned the legal principle of 'terra nullius', and replaced it with the legal principle of 'native title' — that where there was an unbroken and continuing association with an area of land by an Indigenous group, and that the land had not been re-allocated as freehold land, then that group retained all rights to it.

Once the High Court makes a decision, it is a precedent for all other cases which are similar. So in effect the Court decision established the principle of 'native title' throughout Australia where the circumstances were the same as the Mabo case.

Theoretically, other Native Title claimants now had to go to court and prove that their situation was the same as in Mabo's case — but this would be expensive and very time consuming, and leave people uncertain of their rights for many years.

So the Commonwealth Government passed legislation, the Native Title Act 1993, which in effect said that the Mabo case established native title in all cases where Indigenous people were on land that had not been sold by the Crown as freehold, and where they had maintained a continuing connection with that land since before 1788. If they could not prove their occupation and traditional attachment to the land, then their native title had been **extinguished** — that is, cancelled or destroyed.

What the Mabo case did not decide was what the situation was with leased Crown land, the type of land that affected the Wik people. The Native Title Act also did not clearly address this situation, so there was still uncertainty about whether native title existed for the Wik people.

6.1 In your own words, what principle did the Mabo case decide?

6.2 Why was this important for all Indigenous people in Australia?

UNDERSTANDING 7

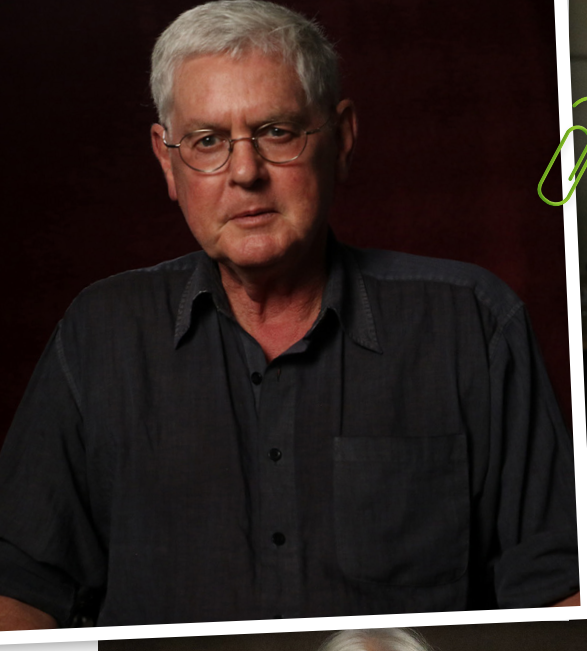
How did the Wik people respond to this?

In 1992, the Wik people (together with another group, the Thayorre people who also claimed part of the land) began a process of taking the Queensland and Commonwealth governments to court to establish their native title to land which included two properties in the Cape York area where pastoral leases had been given.

As in the Mabo case, the Wik people could establish their continuing connection with the area. Unlike Mabo, the area had not been left alone as Crown land — the Crown had rented parts out as a pastoral lease.

The Wik people took their case to the Federal Court (where they lost), and then on appeal to the High Court of seven judges.

In their 1996 decision the majority of the High Court judges ruled in favour of the Wik people's claim to have native title to the area. But they also ruled that the pastoralists also had legal claim to their leases. So, each side had legal rights, which they had to share. The pastoralist could do what



was legally allowed by the lease to run their property, and the Wik people had the right to live their traditional lives — hunting, visiting sacred places, carrying out ceremonies. If the exercise of one set of rights interfered with the other exercise of rights, then the pastoralist's right had precedence, as long as it was within the activities allowed by the lease. So, for example, if on a pastoral lease cattle needed access to a creek, but Aboriginal people claimed that that part of the creek was sacred and claimed native title rights to that spot, the pastoralist's right would prevail.

7.1 What were the Wik people seeking to do?

7.2 Why did they have to go to Court to achieve this?

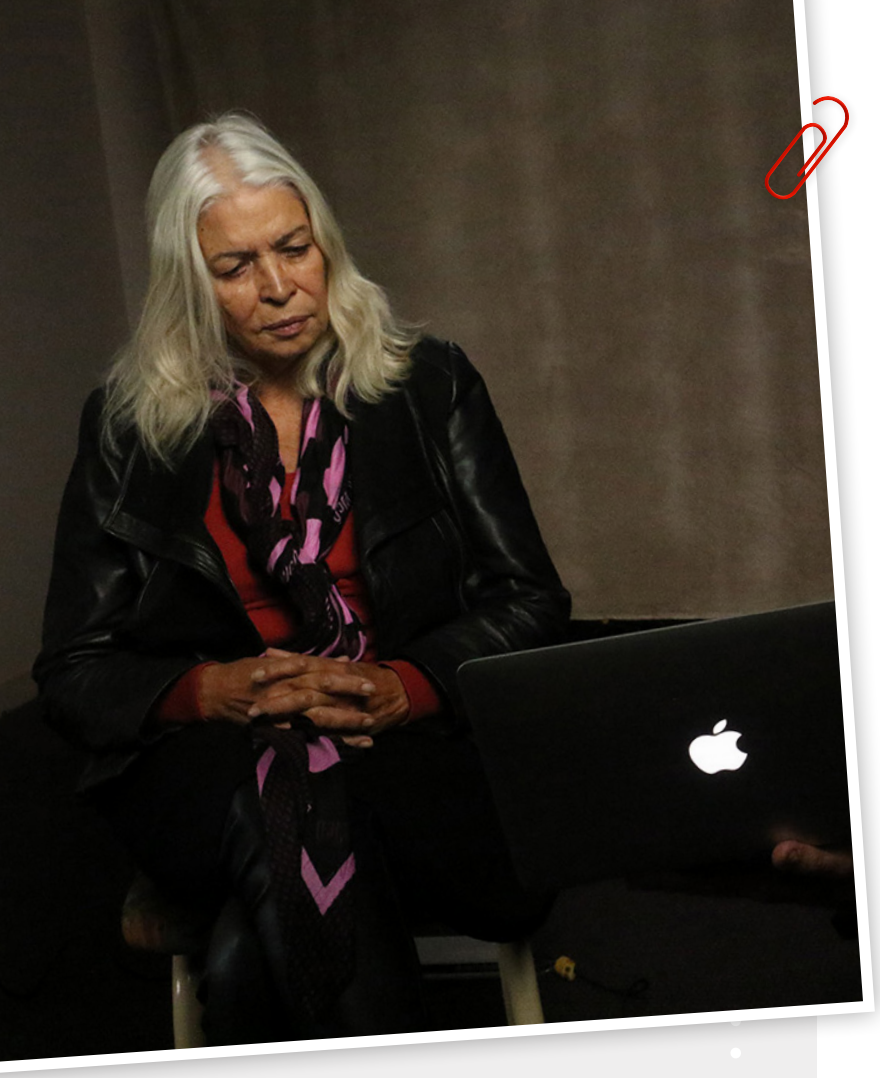
7.3 Between them starting the case in 1992 and going to the High Court in 1996, the Commonwealth Government had passed the Native Title Act establishing native title. Why did this not apply to the Wik people's claim to pastoral leases?

UNDERSTANDING 8

What does a pastoral lease allow?

Legally, a pastoralist can only do what the lease created by the state government allows it to do: those things which will help make the property suitable for grazing animals — mostly cattle. This usually does not cover other uses which are not pastoral — for example growing a commercial crop, harvesting timber commercially, or running a tourist operation such as a farm stay.

Since leases were first developed, there have been many changes to agricultural practices. Pastoralists have been doing things which were not allowed by the lease — such as grubbing out rabbits, or burning off to control bushfires — but which are logical and necessary activities. There have also been major changes, such as the ability to irrigate and the development of new crops, which pastoralists have used to their advantage. Many pastoralists



are carrying out other activities on their properties — such as tourism. Many others want the option to undertake other activities if needed in the future, which could include mining, logging, planting commercial orchards, running 'exotic' animals such as ostriches, or setting up manufactories for distilling essences such as eucalyptus. They want to be able to take on any primary production activity which will make them a profit on the land.

The High Court decision in Wik meant that where a pastoralist had a right under a lease, that right prevailed over Aboriginal people's native title rights on the same land. The Wik ruling seemed to many people a sensible decision — to allow two different groups of people to share access to land. It meant, however, that there were many unclear areas, which caused uncertainty. And this is why there was now much opposition to the Wik decision by some pastoralists — the vast majority did not object to co-existence on the properties, what they objected to was the legal uncertainty over what could and could not be done on the land as a result of the decision.

8.1 How did the Wik decision balance the two different sets of legal rights?

8.2 Why did pastoralists believe that the decision created uncertainty or disadvantage for them?

UNDERSTANDING 9

What was the 10-point plan?

There was much criticism by pastoralists and miners of what they saw as the uncertainties created in their industries by the Wik decision.

Liberal-Coalition Prime Minister Howard tried to 'swing the pendulum of rights' back by proposing 10 changes to the existing *Native Title Act*. (You can see the list of 10 points, together with the arguments in favour of and against them, at Appendix 1 on page xx.) He proposed these changes without consulting Aboriginal people. He said:

"From the very beginning, I said it was simply not possible for the state of the law immediately post-Wik to be maintained. I have never denied that major changes to the right to negotiate were essential.

4 Native title recognition becomes law: The first four years 1994-1997 Indigenous leaders have repeatedly been told by me that pastoralists and farmers must be guaranteed the right to carry on their normal day to day activities without fear of interference or hindrance.

My aim has always been to strike a fair balance between respect for native title and security for pastoralists, farmers and miners . . . I staunchly oppose blanket extinguishment of native title on pastoral leaseholds. [But] the fact is that the Wik decision pushed the pendulum too far in the Aboriginal direction. The Ten Point Plan will return the pendulum to the centre."

An Aboriginal Working Group considering the 10-point plan issued a paper entitled *Coexistence, Negotiation and Certainty*, where they stated that the plan

"does not provide a fair and reasonable response to Wik . . . [and] will result in a significant windfall for pastoralists, with the potential for a massive compensation bill to be funded by the taxpayer . . . in the process, the legal and human rights of Indigenous Australians are being eroded."

25 Years of Native Title Recognition, National Native Title Tribunal. http://www.nntt.gov.au/Documents/Native%20title%20becomes%20law.pdf

Most of the 10 points were accepted by the Senate, but several points in the government's proposal were rejected, which partially reduced the loss of Indigenous people's rights. These were:

- reduction of the right to negotiate;
- a sunset clause which limited the time Indigenous

people had to claim native title on an area; and
- a stricter test of who could claim native title rights.

The Senate also passed an amendment which made the Native Title Act subject to the provisions of the Racial Discrimination Act — to ensure that the Act did not discriminate against Aboriginal people on the basis of race.

9.1 In your own words, explain why the proposed government changes to the Native Title Act created division among Indigenous people, including the Wik people.

UNDERSTANDING 10

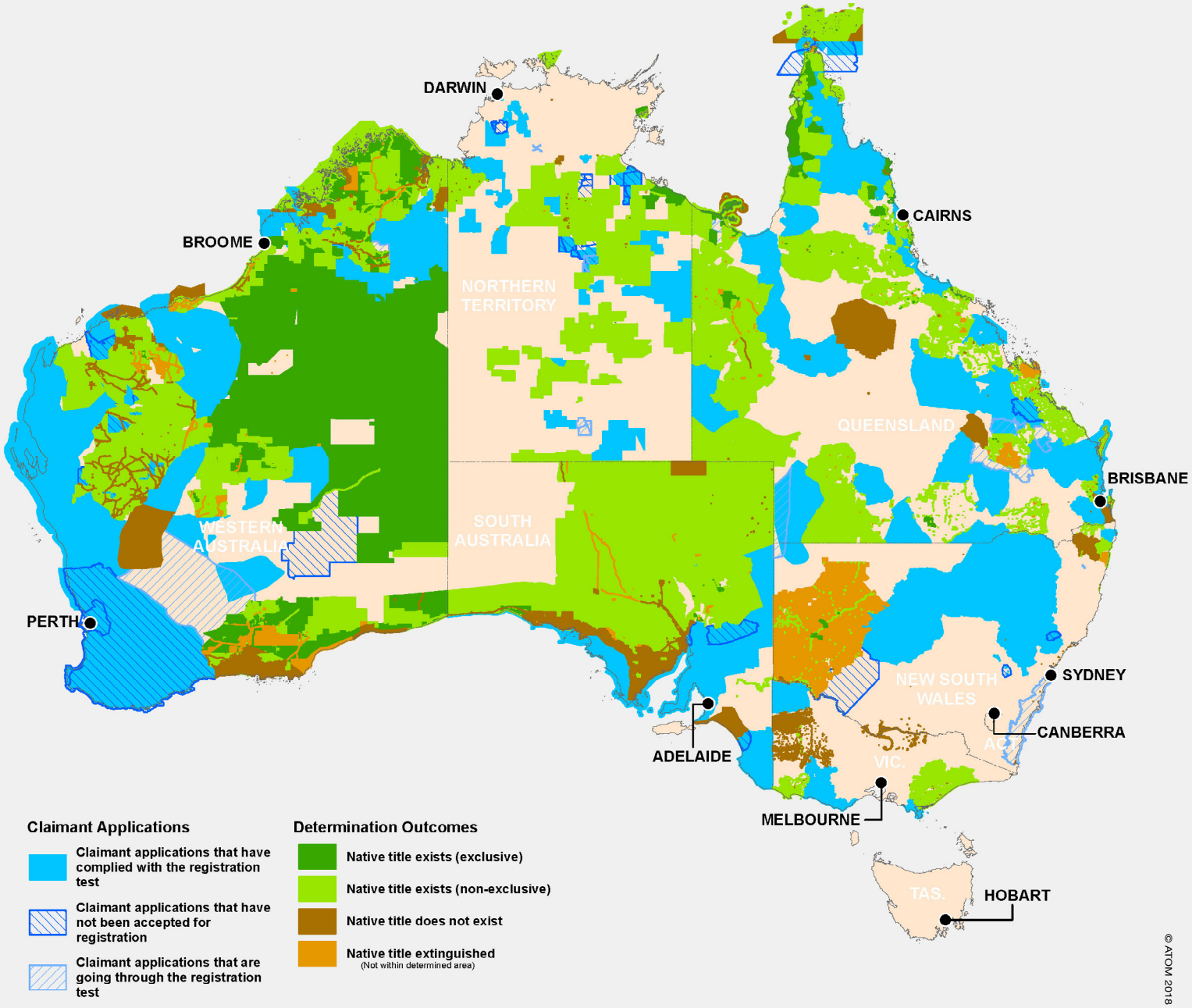
What effect has the *Native Title Act* had?

Since the passing of the *Native Title Act* many Indigenous groups have made native title claims. The map below shows the successful, unsuccessful and pending native title claims as of December 2017.

10.1 How successful does the *Native Title Act* seem to have been in establishing native title rights to Indigenous people throughout Australia.

10.2 What limitations might still exist on those rights?

You now have the background needed to watch *Wik vs Queensland* and explore the experience of the Wik people to their land rights claims.



http://www.nntt.gov.au/assistance/Geospatial/Pages/Maps.aspx

EXPLORING INFORMATION AND IDEAS IN THE FILM

Nearly a quarter of a century on from the original court case, Wik vs Queensland takes us inside the High Court's decision and subsequent events through the eyes of Wik traditional owners, and our nation's political, judicial and Aboriginal leaders. With unique access to never before seen archive footage Wik vs Queensland transports the watcher back to this momentous period of our nation's history and the currency it still holds today.

Watch the film, answer the questions, and then decide on your own opinions in the **Bringing it Together** section.

Interviewees in the film

CAPE YORK LAND COUNCIL:
Noel Pearson, Frankie Deemal, Professor Marcia Langton AM.

LEGALS:
Walter Sofronoff QC, Philip Hunter, Adrian Duffy QC, James Fitzgerald

MEDIA:
Todd Condie, Kerry O'Brien

TRADITIONAL OWNERS:
Fiona Wirrer-George Oochunyung, Phyllis Yunkaporta, Keri Tamwoy, Janine Chevathun, Maree Kalkeeyorta

LEADERS:
Peter Yu, Senator Patrick Lionel Djargun Dodson

ANTHROPOLOGIST:
Peter Sutton

Introduction

(00:00 – 02:28)

1 The film provides a set of short comments by participants on a great variety of aspects. What issues are raised? What impression of the issues does this approach give?

The Rise of the Cape

(02:28 – 30:26)

2 Much of this section of the film is about the origin and nature of the Cape York Land Council. What is this body? Why was it formed? What sort of people formed it? What were its main aims?

3 What sort of developments were occurring or planned that produced a need for the local people to form their own representative body? Why were the local people not consulted in these proposed developments?

4 Jacob Wolmby is quoted as saying when asked about reconciliation: 'I will never forgive and I will never forget.' What injustices and actions might he be referring to? Why might he be so strong in this opinion?

5 At the same time that developments were being proposed, there was a 'homelands' movement. What was this homelands movement, and why did it exist? What benefits and advantages was this to create for local people?

6 The possibility for local Indigenous people being effectively in control of traditional lands was created by the Mabo decision of the High Court of Australia in 1992. Before this legislation, such as the Queensland laws, meant that Indigenous people had no legal rights to their traditional land. Mabo meant that Native Title (Indigenous legal right to their traditional land where there was a continuous connection with that land) might still exist on pastoral leases. For a court decision in one case to apply nationally, the Commonwealth Government had to create a national law. This was done with the Keating Government's *Native Title Act*. How did Keating's Redfern speech and his planning for a *Native Title Act* influence the Wik people's decision to fight for Native Title on areas that had been leased to pastoralists?

7 Why did the Wik people want to have control over what was done in their own area?

8 Who were the leaders in this fight? Why were so many women leaders included?

9 What was the significance of the *Aak* book for their legal fight?

The Decision

(30:26 – 53:00)

10 The Wik and Thayorre case in the Federal Court failed. The case was then sent on appeal to the highest court in Australia, the High Court, before a Full Bench of 7 judges. What legal principle concerning native title and Queensland pastoral leases did the High Court decide?

11 By this time the Keating Government had been defeated, and the Liberal-Coalition Government under Prime Minister John Howard was in power. How does the film represent the way Howard was perceived by the Wik leadership group?

12 Gladys Tybingoompa becomes a focus of the film. Why was she able to operate successfully in the two worlds of Indigenous and European Australia?

13 What does she say were the difficulties of living in these two worlds?

The Fallout

(53:09 – 1:14:55)

14 After the decision Prime Minister Howard introduced his 10-point plan to adjust the *Native Title Act*. Why did Howard introduce this plan?

15 The Wik decision meant that the Wik people had won, but the 10-point plan would lessen the effect of the High Court decision on Indigenous land rights. How would the plan lessen these rights, especially in relation to mining?

16 Prime Minister Howard talks about the pendulum of rights having swung too far. What did he mean by this? How did his 10-point plan bring the pendulum back?

17 The film shows the key role of Senator Brian Harradine in passing the revised *Native Title Act*, incorporating the principles set out in the 10-point plan. Why did Harradine pass the Act?

Back to Country

(1:14:55 - END)

18 The film ends with Maree out in the bush. What is the point or message of the film in choosing this ending?

BRINGING IT TOGETHER

Here are two statements from the filmmakers. Read these, and use this information together with your viewing of the film and your understanding of the historical background to answer the final questions.

Behind the story

Wik vs Queensland has been many years in the making. The spark was lit by Louise Griffiths, a woman who lives in the country outside of Canberra. Louise's late husband, Lew, was a cameraman who dedicated a lot of his time to the people of Cape York Peninsula.

Over 20 years, he visited the Wik people of Aurukun, capturing their stories with his camera. He was one of the early trailblazers of media and content creation in remote and regional Australia, accumulating over 2,700 hours of archive film and gaining a unique insight into one of our nation's most unique periods of Aboriginal political history. Through Aboriginal leader Noel Pearson, Louise offered up full access to her late husband's archive to Aboriginal filmmaker Dean Gibson. This was the catalyst to unlocking the vault of archive material and revisiting this significant piece of Australian legal, political and — most importantly – Wik history.

Over a period of 18 months, development took the team to Aurukun for dozens of conversations with community elders and family members over cups of tea and scotch finger biscuits. Unfortunately, the years that had passed meant that many of the Wik people in the archive film had passed away, so the team spent extended periods of time talking, yarning, sharing, interviewing and meeting with their families. Dean Gibson had previously filmed in Aurukun, and had earned a high level of respect and trust from within the community. The road from Weipa to Aurukun became well worn by the team.

As the story developed, one point became very clear: this was a very complex and emotionally-charged story. The production team knew that this story needed to be more than just another legal and political drama that would get bogged down in the details. It was important to have the key players as part of the film to reflect from a national and personal perspective.

Production took the team right around Australia — from long periods in Aurukun, to Broome, Adelaide, Melbourne, Brisbane and the Sunshine Coast. Their priority was to be efficient and un-intimidating, so by keeping the crew and infrastructure levels down, the team was able to keep the interviewees feeling comfortable and safely navigate the memories of reflecting on people passed.

Wik vs Queensland was a special film to be part of for the entire team, mostly for the reason that behind the public outcry for the case was a group of people who just wanted the best for their future. They wanted the ability to access their country and secure it for future generations. The production team knew that guiding the Wik people back in time into past memories could have been a highly traumatic and challenging experience. But it wasn't. People generously gave their time and shared. It empowered the Wik people to look within and find their voice around this moment in history.

In telling this story truthfully and respectfully, it was imperative that we give people closest to the issue a voice, the Wik Traditional Owners. This has been their opportunity to tell the story from the Cape, so trust and relationships were built, and cultural respect observed.

It wasn't always easy, but it was important, and that's what matters the most.

THE FILMMAKERS:
Writer & Director: DEAN GIBSON
Producer: HELEN MORRISON
Executive Producer: TRISH LAKE
Cinematographer: MARK BROADBENT
Editor: LINDI HARRISON
ASE Composers: TANE MATHIESON & JEFF MOULTON

Director's Statement

Wik vs Queensland is a film about power. It represents a snapshot into a heightened moment in Australian modern history that continued the ongoing arm wrestle between black and white Australia, and between Canberra and Aboriginal communities. It exposes the power shifts, the politics of land, the tactics, the strategies and the power of press, told from the Aboriginal perspective. Power is placed across the entire narrative and plays strongly towards the style and tone of the film.

This film plays out like a political thriller: white vs. black, conservative vs. progressive and the Aboriginal voice in this landmark moment in Australian political and Aboriginal rights history. The Wik Case is the 'Mabo Moment' for Aboriginal Australia — acknowledged for the first time legally under western law, this was the Aboriginal time to shine.

However, many of our nations so-called 'leaders' chose to demonise Aboriginal people and blame them for laying claim over what the High Court considered just as equally theirs. These Aboriginal people didn't have a voice then, but they do now.

Their voice is the narrative for this film. For the first time ever, we reflect on this checkered moment in history through Aboriginal eyes. We look at the significant players and stakeholders said; how they responded, what their motives were and how we can look back now 20 years on and begin to get a perspective of the ongoing relationship between black and white Australia. This film is an opportunity to hold people accountable for racist actions, language and motives in what was a turbulent period for Aboriginal peoples.

Wik vs. Queensland is a retrospective documentary film. It takes viewers back in time to get a sense of what Australia was like and how the attitudes towards Aboriginal people were perceived back then. Strong research and 1990s period news archives help set the scene of the case and decision. Behind the scenes, we have managed to gain access to the never-seen-before archives of a young Noel Pearson moving around the Cape, meeting with the Wik people, dealing with the courts and of course, engaging in the top end of town with the Australian Government politicians in Canberra.

The archival material is pieced together by stylishly shot, solid interviews with many of the stakeholders from the period. They reflect on the times through their memories, but also consider looking carefully at the period through Aboriginal eyes. I want people to see politicians consider their actions of the day as far-reaching, not just for the Wik people but for the entire Aboriginal population.

1 Why did the Wik people want land rights?

2 Why were these in part opposed?

3 How did the courts and the Commonwealth Government try to solve the dispute?

4 Where do you think the 'pendulum' of rights ended up — favouring the Wik people, or the pastoralist/mining interests?

5 What does the case tell you about who had power, and how it was used?

6 Do you think justice was done?

7 The film focuses on a number of significant characters in the fight, and they are acknowledged in the end:

PHILIP HUNTER: *Twenty years is a good part of an entire generation, and that's the upsetting -- the most upsetting part of the journey that they've been on. That there's so few that were at the forefront of the initial fight that are still alive to celebrate and be proud of what they've done.*

JAMES FITZGERALD: *Some of the things that we were able to achieve were due, you know, to hard work. Some of them were by virtue of this extraordinary convergence of people and events.*

PHYLLIS YUNKAPORTA: *I have the utmost respect and I'm privileged to know that they were there for me, for my community, for our community, for our children, and for the future, for our children, so that they can gain something from the knowledge these special, unique people have left.*

Who would you say were the heroes of the Wik fought for land rights? Explain your reasons.

8 *Wik vs Queensland* is a documentary film. Documentaries can be different types:

- Fly-on-the-wall
- Point-of-view
- Argumentative/ persuasive/activist
- Narrative, story-telling, informational
- Dramatic entertainment.

Which type is this one? Justify your answer.

9 The film's director, Dean Gibson, has written:

This was a turbulent time in Australia's recent past, which cast a long shadow over the treatment by white Australia to Aboriginal Australia, from which much can now be learnt. Through this documentary, the Wik people will have a voice as we face a potential referendum on the place of Indigenous people in our nation. It will aim to bring a greater depth of understanding and guide us towards a better future for both black and white Australia.

Do you think he has achieved these aims in *Wik vs Queensland*? Explain your reasons.

APPENDIX 1

THE 10-POINT PLAN AS IT WAS SEEN THEN

Most of these points were accepted by the Senate. The four points in the government's proposal which were rejected were:

1 The right to negotiate (point 6)
2 The sunset clause (point 9)
3 The stricter threshold test (point 9)
4 The Senate also passed an amendment which made the Native Title Act subject to the provisions of the Racial Discrimination Act — to ensure that the Act does not discriminate against Aboriginal people on the basis of race.

The rest were re-enacted in the *Native Title Act* 1998.

ELEMENT OF THE COMMONWEALTH GOVERNMENT'S 10 POINT PLAN	GOVERNMENT ATTITUDE	ABORIGINAL PEOPLE'S ATTITUDES
1 Validation of pastoral leases between the operation of the *Native Title Act* 1 January 1994 to the Wik High Court decision 23 December 1996. Over 800 new leases were issued between these dates which give exclusive title to the leaseholder. They were mainly allocated by the Queensland government. They exclude native title rights -—although the High Court decision on 23 December meant that these native title rights were excluded illegally. This amendment to the *Native Title Act* will re-establish the legality of these leases. Compensation will have to be paid to the native title holders who have lost their rights in this way — 75% will be paid for by the Commonwealth, and 25% by the State.	This is necessary to protect leases issued by State governments since the *Native Title Act* 1993. The Wik decision in effect made those leases illegal. People did not know of the Wik decision when they were made, so it is wrong to take the leases off people who thought they had a legal title. Native title holders will be compensated, and the pastoralists will keep their land.	This is taking away a right which the Wik decision established for Indigenous people. It is extinguishing the native title right on that set of leases. Governments knew that the Wik case was in court, and should have waited for the verdict before changing existing leases from leasehold to exclusive freehold rights. The Australian people will pay millions of dollars in compensation for a few pastoralists to gain freehold title to the land.
2 Confirmation of extinguishment of native title on 'exclusive' tenures. In this proposed amendment the legislation will state clearly that certain titles extinguish native title. This includes freehold, residential and commercial titles and public works — including private homes, schools, hospitals, roads, railways and stock routes. This is re-stating what the government believes to be the existing situation, but making it absolutely clear to all.	This will take away all possibility for any native title claims on private homes, schools, etc. It will say clearly what the law is, and everybody will be certain about who owns and controls what.	This change could allow state governments to make leases exclusive where they should not be. This would mean that many native title claimants would lose their rights forever.
3 Provision of government services. This will remove any doubt that native title can stop the provision of water supply, power, etc. If native title exists on the areas involved and is reduced by the provisions of public works, it will be compulsorily acquired and compensation paid in exchange.	Government services must be able to be provided as required. No person in Australia should have the right to oppose them. Compensation will be paid where native title rights are interfered with — just as is done now to private landholders where public services interfere with their property.	This could lead to local and other governments interfering with important areas within the native title claim, not managing them properly, and giving the native title claimants no say in the process.
4 Native Title and pastoral leases. This will involve: • extinguishing native title if it is inconsistent with the rights of the pastoralist • extending the activities allowed on the pastoral lease to include all agricultural activities, including farm stays, as long as the dominant activity on the lease remains agricultural • State governments can take over the area for any purpose, including to change it to freehold, but must pay compensation for the permanent loss of native title rights. • remove Aboriginal people's special rights to negotiate terms over proposed developments such as mining on land; they can still oppose the mining, but will have to go through the same appeals processes available to the pastoralists.	The Government supports the existence of native title rights. Native title rights inconsistent with a pastoral lease will be permanently extinguished, to allow for the lease to be passed on over time. The possibilities of farm uses have changed greatly since pastoral leases were first issued. The reality of commercial life means that pastoralists need to be able to undertake any farming activity which can help keep them profitable. We want farming families being successful. Aboriginal people will still have the same rights to negotiate as everybody else, but they will not have the special rights which the *Native Title Act* gave them.	The extension of what is allowed on a pastoral lease from 'pastoral production' to 'primary production' will extinguish some native title rights. The more a pastoralist can do on the property, the less the rights of the Aboriginal native title claimants are. This is reversing what the High Court Wik decision was trying to establish — a set of rights to Indigenous people based on their traditional use and occupation of the land. Once the nature of the use of the land by pastoralists changes, native title rights must also lessen. Such extinguishment of rights will be permanent, even if pastoralists then leave the lease or it reverts back to previous uses.

ELEMENT OF THE COMMONWEALTH GOVERNMENT'S 10 POINT PLAN	GOVERNMENT ATTITUDE	ABORIGINAL PEOPLE'S ATTITUDES
5 Statutory access rights. This will guarantee continued access to land by registered native title claimants only if they currently have physical access to that land.	There are many cases of different groups claiming the same land, and all claiming access rights. Only those claimants who have current physical access will be able to have access to the property until any claims are determined. This will keep opportunistic and insincere claimants off the land.	Many who ought to have access have been locked out illegally by pastoral leaseholders. This clause therefore makes permanent the illegal exclusion of legitimate claimants, and rewards those who have carried out illegal acts.
6 Future mining activity and negotiation rights. The *Native Title Act* currently gives native title claimants extensive powers to negotiate at every stage of a proposed mining development on the land. The amendment would reduce the current indigenous people's rights and mean that leaseholders and native title claimants will have equal rights to oppose or negotiate over projects.	The existing *Native Title Act* gives native title claimants the right to negotiate at all stages of the exploration and mining stages — a greater right than any other party. This amendment will give all parties equal rights in negotiations.	At the moment there is the right to negotiate to allow exploration, and then to allow an actual development. To take this away to one right only removes control over one of these two stages — which means that there can be no control over what happens on the land at that stage. The right to negotiate is essential for indigenous people to protect their cultural and economic interest in the land.
7 Future government and commercial development. This increases the power of governments to acquire areas for development, and reduces the power of native title claimants to negotiate. Compensation for compulsory acquisition of native title rights will be by the Commonwealth (75%) and the States (25%).	This means that the law about compulsory acquisition and the right to negotiate applies equally to all citizens.	This is racially discriminatory, as it takes away rights to negotiate which currently exist for Indigenous people. The cost of this will be many billions of dollars to Australian taxpayers, and in many cases it will be individuals and commercial developments which will profit from this taking of native title rights.
8 Management of water resources and airspace. This asserts the Crown's ownership of waterways, sea and air. Some native title claims have been made on the sea bed, rivers and air. These claims have never been tested. This amendment will establish the law and will stop such claims in courts.	Governments will have the sole right to regulate and manage surface and sub-surface water, off-shore waters and airspace.	There are court cases running at the moment to test if native title rights include water and airspace. This Act will extinguish a possible right before it is properly defined.
9 Management of claims. This amendment proposes a stricter test of who can claim native title. It also introduces a six-year period (or 'sunset clause') in which claims must be made if they are to be dealt with by the special processes set up in the 1993 *Native Title Act*. After that period claims will have to go through the normal legal processes.	The ability of people to claim native title will be tightened. A 'sunset clause' will be introduced - meaning that claims must be made by a certain date, and will not be allowable after that. Pastoralists will have legal aid more readily available to respond to native title claims.	All agree that the 'threshold test' of who has a right to claim native title needs to be tightened, but there should be a right to claim native title on spiritual not just physical grounds. The sunset clause is unfair, because people will still be able to make claims after six years — it will just mean that it is done under a different Act, without the current rules and procedures which are designed to make claiming native title rights work effectively being followed.
10 Agreements. This will allow voluntary but binding agreements to be made between individual native title claimants and pastoral lease-holders.	Voluntary but binding agreements will be made easier to negotiate, rather than using the more formal native title machinery.	This is fine as long as Aboriginal people are clear about what their legal rights are.

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This study guide was produced by ATOM.

ISBN: 978-1-76061-182-8
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