## Mabo: A Judicial Revolution

The Aboriginal Land Rights Decision and Its Impact on Australian Law

Edited by M.A. Stephenson and Suri Ratnapala

University of Queensland Press

First published 1993 by University of Queensland Press Box 42, St Lucia, Queensland 4067 Australia

© University of Queensland Law Journal 1993 Copyright in the individual contributions remains with the authors

This book is copyright. Apart from any fair dealing for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries should be made to the publisher.

Printed in Australia by McPherson's Printing Group, Victoria

Distributed in the USA and Canada by International Specialized Book Services, Inc., 5804 N.E. Hassalo Street, Portland, Oregon 97213-3640

Cataloguing in Publication Data National Library of Australia

Mabo, a judicial revolution.

[1]. Aborigines, Australian — Land tenure — Law and legislation. [2]. Aborigines, Australian — Legal status, laws, etc. I. Stephenson, M.A. (Margaret Anne), 1954— II. Ratnapala, Suri, 1947— III. Title, University of Queensland law journal.

346.940432

ISBN 0702225460

## Contents

Acknowledgments vii
Contributors ix
Foreword xiii
Introduction xv
The Mabo Case - Public Law Aspects
R.D. Lumb 1

Mabo and Its Implications for Aborigines and Torres Strait Islanders Frank Brennan S.J. 24

Mabo and Political Policy-Making by the High Court Gabriel A. Moens 48

Mabo and Land Rights - Searching for a Golden Thread R.B. O'Hair 63

204 Years of Invisible Title

Noel Pearson 75

Mabo - A New Dimension to Land Tenure - Whose Land Now? M.A. Stephenson 96

Native Title and Pastoral Leases Henry Reynolds 119

Copyright Protection for Australian Aborigines in the Light of Mabo Kamal Puri 132

Folk-Law or Folklore: When a Law is Not a Law. Or Is It? K.E. Mulqueeny 165

Some Problems of Proof: The Admissibility of Traditional Evidence B.A. Keon-Cohen 185

Mabo and the Miners

J.R.S. Forbes 206