What is the source of land tenures in Australia?

Upon arrival in Australia, the British disregarded the laws and customs of the Aboriginal and Torres Strait Islander inhabitants. Australia was acquired by ‘settlement’ and was deemed to be *terra nullius* (a land belonging to no one).

The view that Australia was acquired by ‘settlement’ applied until the decision of the High Court in *Mabo (No. 2)* in 1992, which found that the common law of Australia is able to recognise the prior interests of Aboriginal and Torres Strait Islander people in land.

The British brought English law with them to Australia when they took possession in 1788. This means that the system of land law in Australia (apart from native title rights and interests) derived from the system the British Governments used in Great Britain.

Land in Australia is held ‘of the Crown’. That is, people can only ‘hold’ land when it has been granted or otherwise alienated by the Crown. Even today, a person who ‘owns’ freehold land or an estate in fee simple is properly described as ‘holding’ the land ‘of the Crown in the right of the State’. This means that a person who holds freehold does not have absolute control over their land. Governments still retain the power to do things on the land without the owner’s consent.

When governments issue titles in land they issue many different types of titles to land. The most common are freehold titles or leasehold titles.