



PRIME MINISTER

**TRANSCRIPT OF THE PRIME MINISTER, THE HON. P. J. KEATING
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MB: Well, Prime Minister, welcome to PM. Wayne Goss today said the Federal Government should validate all title back to 1788. Mining companies are concerned about their investments and Aboriginal groups are also unhappy. Hasn't this gone on long enough and isn't it time, indeed, your job, with the uncertainty surrounding the investment climate, to sort this out?

PM: It's not my job at all in that respect. I'm not here to resolve uncertainties that are created by the rights of individuals to take cases of appeal to the courts. I mean, you might recall that a couple of weeks ago Western Mining and the Savage River Mining Company had a similar matter running and Western Mining lost the case.

Now, legislation which wipes out the right of people to appeal is not my job at all. And the High Court has made it quite clear that freehold title issued since 1788 extinguishes native title.

MB: So who's responsibility is it then, now?

PM: Well Mr Goss is making it clear that - he says he's now picking up pretty firmly some of the points I made yesterday - saying oh yes, I know, I understand he said, we shouldn't be acting in a non-discriminatory way. And he said, let me quote him, he said, he claims he's, "always sought that validation be undertaken on a non-discriminatory basis". Well if that's the case why does he want the Commonwealth for us to legislate and put aside the Racial Discrimination Act?

See, bear in mind this Michael. That is, that these leases are Queensland leases. If - they're not Commonwealth leases - it's the Queensland Parliament that has to legislate to give statutory power to these leases. That is, ie. validating them. If the Premier says he's going to do that in a non-discriminatory way why does he want the Commonwealth to do anything? I mean, why then do we have to

introduce an amendment to the Racial Discrimination Act? If he says it's non-discriminatory, what's the problem?

MB: Well the Wik people are saying that Queensland breached duty of care by giving the lease to Comalco, now obviously you would agree with that.

PM: No I wouldn't agree with that. I don't know that it's true. They allege that. But, you see, this is the point, Queensland is about more than the non-discriminatory validation of its leases there. There are all these other questions about breach of trust, there's questions about indemnity. See what Mr Goss is saying is, 'all I want is non-discriminatory validation of leases.' That's not all he wants at all. He wants us to validate, he wants us to suspend the Racial Discrimination Act so that some of these other matters like breaches of fiduciary duty and trust can be dealt with. And as well as that he's asked us for indemnification. Now, these are the points which we make very clear to him.

MB: But couldn't this scenario be repeated across the country? I mean it's happening here in far north Queensland but essentially the same thing could happen anywhere, couldn't it?

PM: Well the High Court has said, and you're welcome to read the judgement the same as anyone else, that freehold grants of interest in land and leases extinguish native title. But, it's still, our system of justice still allows people to take an action against a state or a company for what they think is a breach of trust or a breach of duty or some commercial grievance and it is not the job of the Commonwealth Government and its parliament to rush in and obliterate that person or group's right to take such actions.

MB: So how do you take it when Wayne Goss says he wants you to validate all title back to 1788?

PM: I say it's, what he's asking for - and unreasonably asking - is that any matter which might arise about any title issued over the years, that the Commonwealth obliterates any person's right to take issue with the supposed owners of that title. Now, there is no problem, the High Court - don't rely on my word - the High Court said, 'The issuing of freehold or leasehold title extinguishes native title'. So it is not the native title problem. You see, this is the confusion that is here and that Mr Goss, using these terms, in a sense smooths over.

Native title is one thing, but claims by people for other things like breach of trust etcetera are another. It's the native title, which is not a problem in that sense because they are... Let's take the Comalco leases. First of all, it has to be established if native title existed or ever existed. Now, let's say it did exist. If the Queensland Government has

issued leases over that area, it's probably extinguished the native title. So what is the remaining problem? The remaining problem is breach of trust and fiduciary duty.

MB: Well what can you do about that? Why not legislate to protect Comalco in that instance?

PM: But why should the Commonwealth, how can the Commonwealth be asked? I mean, you understand what words you're putting to me. You're saying why shouldn't we legislate. What you're saying is, 'Will you suspend your Racial Discrimination Act to allow the Queensland Parliament to do a racially discriminatory thing?' Well the answer is no. The Racial Discrimination Act is there for a purpose. It's to protect people against discriminatory acts.

MB: Surely other companies could have breached the fiduciary interest as well. All across the country couldn't they?

PM: And that's why there are claims all the time, in the courts all the time. But this...

MB: So Wayne Goss is right then when he says this could happen everywhere?

PM: But it happens every day of the week. I mean, you just had it with Western Mining and Savage River last week. It happens all the time. But is it a government's right to obliterate someone's right? Let's say somebody wants to resume your house. Would you appreciate it if the Government of the ACT or New South Wales obliterated your right to go to the Land and Environment Court?

MB: What does it say about the investment climate we've got then, at the moment?

PM: It just says this is a real world place like every other country in the world. That people have got inherent legal rights and they're not to be obliterated by Governments who are spooked by mining companies.

MB: If you did grant special legislation...

PM: Now let me just make this point. We've already given tax concessions to Queensland to permit the sale of the Gladstone power station to Comalco. We would like to see that range of investments go ahead. And as the Cape York Land Council makes clear that the existing leases are not threatened and the new leases can be negotiated with the Aboriginal people. But the mining company in particular does not want to talk to the Aboriginal people and the Queensland government does not want to talk to the Aboriginal people. They want us to use a Commonwealth sledge hammer where they can actually sit down and

negotiate these things. So the Commonwealth want to the see the project proceed, but we are not about obliterating peoples right at law particularly when it is not necessary.

MB: Is part of the concern though also that if you do make special legislation for this, that it would raise question marks about every other mining lease in the country essentially wouldn't it?

PM: I do not think it does, no. Because a mining lease properly issued extinguishes native title. All your questions go to Mabo and native title, but the whole point about the Wik claim is it is more than Mabo and native title - it is breach of trust, it is all these other questions and that is where we say, this is a Queensland matter, not a Commonwealth matter. If Premier Goss is saying to us what I am after here is validation to be undertaken in a non-discriminatory basis, the simple question is if it is non-discriminatory, after all they are Queensland leases, validate them with a Queensland Act of Parliament and all is well.

MB: Does the question of compensation and who is responsible for it lie at the heart of this?

PM: I don't think so, no.

MB: Who is responsible in this case, Queensland?

PM: It is obviously not the Commonwealth government. These are issued by the Queensland government in 1958. How can the Commonwealth government be in any way involved?

MB: So it is Queensland?

PM: In terms of questions of compensation, if all the claims which are in the Wik set of claims were to succeed, they would be resolved somewhere between Queensland and the mining company. I can not see by whatever jump of logic that somehow it is the Commonwealth government's responsibility.

MB: What can you do about the states generally though? They were talking earlier today about holding a separate meeting without you and I understand that is not on the cards anymore, but it does suggest that they at least are not convinced that you can deliver on this, doesn't it?

PM: What are you talking about now - the Wik claim or Mabo?

MB: No, on Mabo generally.

PM: Mabo - as I said yesterday we have already had, we think, quite a lot of success in the discussions with officials, between the

Commonwealth and the States and we are proceeding down very clear principles on Mabo. As I said yesterday quite clear and I will repeat it to you again Michael - the Commonwealth, for the decisions it has taken is absolutely clear and confident about its position, and it is developing a piece of legislation that we hope to introduce into Parliament in the Budget sessions.

MB: But Mabo itself is developing a momentum all of its own isn't it, do you concede it has gone off the rails a bit here?

PM: There is a fair bit of confusion about it, but that is not helped by the media either. Here we had the Sydney Morning Herald saying today that I had ruled out legislation in respect of this Wik matter yesterday, which I didn't.

MB: Didn't you?

PM: No, no what we said was that the generic legislation that we will introduce for Mabo will cover the native aspects of Wik.

MB: You were specifically asked to give that thought and you didn't do that did you?

PM: No, no, I made that quite clear. Then we had The Financial Review calling false the distinction between wilful discrimination or breach of trust and innocent discrimination in the absence of any knowledge of native title. For me it would seem to be a fairly obvious matter. Then the other one, there is no difference between McArthur River and the Wik claims or a potential settlement. What is written often ... people saying, journalists writing under their by-lines that there is confusion about this - what they should be saying is I am confused about this, but they will not say that, they say there is confusion and who's responsible for the confusion. The fact is the Commonwealth is proceeding along principles, we have published a principles document - 33 principles, which we gave the States ahead of the Melbourne meeting, we have given them a general discussion document on it, the Cabinet has now met on a number of occasions for five or six hours at a time and enunciated principles, Mabo, conceptually, we have covered.

MB: Do you rule out Federal legislation in the Wik case?

PM: Of the generic variety no. Because the generic variety will come up in respect of native title under Mabo, but Wik is about more than native title, that is the point.

MB: But what does it mean in plain language. Do you rule it out? Do you rule out coming in and solving the stand-off that we have?

PM: If you are asking me am I prepared to rule in discriminatory legislation - that is by suspending the Racial Discrimination Act to permit Queensland to pass discriminatory legislation to deny the Wik people their rights to appeal to the Courts - I would not pass such legislation. No, I wouldn't.

MB: So the Commonwealth will not step in under any circumstances here, it is a Queensland problem and that is where it lies?

PM: You have got to understand yourself, you are putting the questions. A minute ago I made a distinction between native title issues, that is Mabo issues, and non-native title issues. Your question is in respect of which part - that native title part or the other part?

MB: Well, any part, we have a confusion here where a company is worried about an investment.

PM: Yes, but here you are confused aren't you?

MB: Not necessarily.

PM: I think you are. Look, let me take you through it - there is native title issues in Wik and there are non-native title issues.

MB: No, I understand that, but we have a stand-off in a company ...

PM: You are asking me will we legislate for the native title issues. Answer - yes, through the generic Mabo legislation. Will we suspend the Racial Discrimination Act to allow discriminatory legislation to obliterate rights on other matters - No.

MB: OK, how much is the personality clash between you and Wayne Goss got to in the road of finding a workable solution?

PM: I do not think at all, although I notice he said today, he put a press statement out - "... Premier Wayne Goss today said it was unfortunate the Prime Minister resorted to personal criticism in response to Queensland's request ..." that is yesterday. I have made no personal criticism of him what so ever. I am just dealing with the issues at their source.

MB: Coming crying back to mama and some of the things you said just before you went overseas ...

PM: That is a commentary on the notion of the States saying when I go to Melbourne, well hang on we have got rights here and interests, and the moment there is a problem all of a sudden it is transferable to the Commonwealth. So, when the Commonwealth is in there trying to get a resolution of things for Mabo, then we have less than full co-

operation, the moment there is a problem: ding-a-ling! Back onto the Commonwealth. I should have thought that was an obvious point to make and frankly before I made that point, people did not realise, I don't think, in the broad debate, that things like breach of trust and fiduciary responsibilities were an issue here.

MB: But you don't have a problem personally with Wayne Goss?

PM: No.

MB: All right Prime Minister, we will leave there. Thank you very much.

PM: Thank you Michael.

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