



PRIME MINISTER

**TRANSCRIPT OF THE PRIME MINISTER, THE HON P J KEATING, MP
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Well, I think you now have some outline in the press statement I published last night on the decision by the Cabinet in the settlement of the many issues involved in the question of the High Courts historic decision and the awarding of Native Title. And I think that it is fair to say that this legislation will put flesh on the bones of the High Court decision, that it will provide a substantial measure of justice for Aboriginal Australians, and importantly with that a security and an efficient system of land management across the country.

As I said earlier this morning this is a new deal for Australian Aborigines, and as such, a new deal between the indigenous and non-indigenous people of this country. The High Court made its judgement and we now have the chance of legislating away the fiction of terra nullius, and basing our national social policy with Aboriginal Islander people on a truth rather than a lie.

And from that, of course, will flow not just simply justice for Aboriginal people and a system of land management that works in combination with Native Title, but a better basis, a real basis, for reconciliation that in the past has eluded us. Because land is at the heart of Aboriginal dispossession and the repossession of land must be at the heart of any process of reconciliation in the future.

I think this process has created a new understanding between, certainly the Government, but the Australian people, I feel and the Aboriginal community. I would like to pay a tribute here to the Aboriginal leadership under Lois O'Donoghue who did the courageous thing, took the step, seized the moment to negotiate rather than demand, and to sit down and work out where Aboriginal interests truly lie and where they could be offset against the legitimate economic interests of this country. And in doing that we have been, I think, able to reach a good settlement.

Now, as well uppermost in the Governments mind has been the interests of Aboriginal people in being able to secure and work land, but also there has been the requirement to see our great land based industries be able to go on as they have in the past, to be able to access land, to carry out exploration and mining, in the case of the mining industry, for grants of interests in relation to the pastoral industry, or the tourism industry, or commercial development, that we have a system here now which can happen within reasonably tight time frames in processes which are exclusively with the States and ones where the States' imperatives in land management, I think, are being met. From the States' point of view their interest has been to see that past grants were valid, past grants that they issued were capable of being validated, and that there was a workable system for issuing new grants of interest over Native Title land in the future - and at the same time giving Aboriginal people a right to be asked - a genuine right of negotiation, but in the end the rights of the States to make decisions in the State interest, in the State interest on what they think is viable in terms of their interest in land and development.

But this is a Native Title Bill. The primacy of the interests are with the title holders, those people who can make claims, who would wish to make claims and have Native Title awarded and protected. And the Bill therefore ... therefore the primacy of the Bill goes to Aboriginal and Islander peoples interests. But it has that happy mix, I think, between those interests and the interests of the rest of the country, both in social and economic terms. And I think it does prove that the cynics are not always right in thinking that differences here were irreconcilable, that there was no basis upon which a various interest could be accommodated in relative harmony, in a package which could be agreed by the various stake holders. Now, I think that has not been true and I think the sceptics will have to think again, and if it means that access to land does something, if late in the piece, about justice for Aboriginal people and their inclusion in the laws of this country, in respect of land in our greater society then we will go along together as one country, as one nation. And that's a core part of what Mabo, I think, means.

Can I also say that I think it was important that the High Court in having made this decision wasn't hung out to dry by the Parliament. That is, prestige was not put under question, and that a decision well taken and courageously taken was supported by the Government. There has been more ministerial time devoted to this issue than any issue in the last ten years, and without that detailed work it wouldn't be possible to develop a Bill of this sophistication, and without this sophistication it wouldn't be possible to introduce this sort of legislation. It wouldn't settle the issues without this sort of sophistication, and I may not have another opportunity, but I want to place on the record the work done by the officers of our Commonwealth public service, the officers in my department, Prime Minister and Cabinet, Sandy Hollway, Mike Dillon, Robert Orr and others who have worked tirelessly and ceaselessly now for over a year on this problem,

and who had previously worked on the reply to the Aboriginal Deaths in Custody Royal Commission. They have been now working consistently on these issues for a couple of years. So, I should like to take the opportunity to thank them, and also those State Premiers who could see something bigger and something better and tried to see what could be done to meet both the Commonwealth, the State and the Aboriginal and Islander interest in this country, and those State officials who were also involved in negotiation who tried and have materially in some ways made the Bill a better Bill than it could have otherwise been. So, I might leave my introductory remarks there and invite questions.

J: Can you explain the situation where you have got valid leases, the situation you talked about yesterday? Will Aborigines still be able to dedicate their so called residual rights for the residual Native Title lots, or have they been extinguished as well?

PM: Well, Tom, if Aboriginal people have given up residual rights on invalid leases, and they have, in a sense why would they bother on valid leases? I think that is the question, that is, the key word here is valid, and the validity will, I think, extinguish to all intents and purposes any rights other than those of the pastoralists, or any other stake holder.

J: Will the Aborigines be able to use ...(inaudible)

PM: Well the legal force of the Act will remain. I think the Act remains unblemished. But how applicable it is to any of this is a moot point. I mean, that's a matter really for Aboriginal people and their lawyers. I can't see any application here because our Bill, as I say, emanates from the RDA and I don't think crosses any of its principles.

J: So, Prime Minister, it's the precedent of post 75 RDA validation that protects pre '75 valid leases?

PM: Say that again.

J: It's the precedent of post 75 RDA validation by the Federal Government which effectively protects pre '75 valid leases?

PM: I have got no doubt counsel for the defence would certainly argue that.

J: (inaudible)

PM: Yes, I had a very positive phone call with Jeff Kennett this morning, and I think that you will find that the States believe that this does provide a workable basis of land management simply because the key institutions are theirs. There won't be a Commonwealth institution granting interest

over Native Title land other than the ACT Commonwealth Tribunal, and the ACT and Commonwealth lands, or that which would operate in a non-cooperating State. But for cooperating States there won't be a Commonwealth Tribunal granting interests over Native Title land. So, all the economic use side of the legislation is with the States. And we have kept their structures, we have even kept to their wishes about just terms being paid only on extinguishment and not in any other terms, that is, for any disturbance or disfigurement of the landscape. In all these key areas the mining warden still remains, reconfigured, but remains as a key thing. There will be a State ministerial override available if States wish to exercise it. Of course they will have to do it with due caution, but it is, I think, a real one. So, from the States' point of view they should regard the thing as reasonable. As also particular categories of grants will be able to be excluded from the special legislation. That is, the special negotiation regime. They will have to be negotiated, that is, those that can go ahead without a process of negotiation which will keep the system lubricated, compulsory acquisitions will still be available, it will apply to Native Title land except where the acquisition is in order to make a grant to a third party, there will be a negotiating period for that. But the the normal acquisition right will obtain over Native Title land as freehold land, as I say, compensation for impairment will be set in an accordance with current State Territory procedures. So, from the States' point of view, and of course, the Commonwealth will meet a large part of the compensation for the period of validation '75 to '93. That is, all those interests which would have been rendered invalid by the Racial Discrimination Act, or the interaction of that Act with Native Title, we will establish a regime there. Existing Crown ownership of the sources can be confirmed, and access to beaches, waterways, recreation areas can be confirmed to.

J: Prime Minister, what changed the position that you held in Question Time yesterday from what we now have as the final position in regard to valid title?

PM: Well, I told the Aboriginal people with whom I negotiated last week that I would argue a case for them that there may be residual rights, however slim, attaching to some of the leases invalidated because of the interaction of the Racial Discrimination Act, Native Title or in relation to the interaction of other Acts. And in arguing that case I understood that it meant that for those lease holders that they may face some action. Regardless of their likelihood of success they may have faced them. And then last evening in negotiations with the Aboriginal community said well maybe it is possible to consider a way where there is a greater Aboriginal community benefit from a more certain set of rights than the slender set of rights, the uncertain set of rights which might flow from Native Title rights which were not inconsistent with a grant in invalid leases. And so the

proposal we arrived at was one where pastoral leases are owned by Aboriginal people, and there are many of them owned by Aboriginal people, or acquired by Aboriginal people that is, for the future as well. That if those holders can demonstrate a traditional linkage with the land under the Mabo principles we will turn it into, they will be able at the Tribunal, or at the Federal Court to pick up a title equivalent to Native Title. Now, I think this is very attractive for many Aboriginal people, because as you know there are pastoral leases all over the country, they own many and will have the opportunity of buying more and this gives them a certain title and a certain access. And bearing in mind also that the Commonwealth as part of this package is developing a land acquisition fund of substance, some of those funds could conceivably be employed in acquiring pastoral leases which could then become Native Title areas. So, considering, in their terms, the slender rights and uncertain rights which may have obtained with invalid leases, they've bargained something in return which they think is more certain and more valuable. In that case, equity has been met, justice has been done and honour has been settled and a reasonable agreement has been made.

J: On page three of your statement you talk about the invalid leases ... (inaudible) ... before 1975 ... (inaudible) ... rights as yet unidentified in law. And then you go on in the next paragraph to talk about, "The Bill will provide that any leases which might be found to be invalid, in any circumstances connected with native title, can be validated." Does that mean that they have to go to the Court first to identify them or..?

PM: No. That means that the states can validate them. See, we don't validate the leases, the states do. But they've got to get the legislative authority from the Commonwealth, via the RDA (Racial Discrimination Act), to actually effect the validations in a way which is not ultra vires of the RDA. And it is the states who will be doing the validating and they will be able to validate leases which, for one reason or another, may have become invalid due to the interaction of the RDA or other Acts.

J: So it won't be required to be tested at law first?

PM: No.

J: When the bill provides for the states to validate those leases and where it provides for extinguishment of native title will there be retrospective procedural fairness provisions built into that, how will they work and what safeguards will there be at the end of the day?

PM: Well, under the special measures provision the Commonwealth will be validating the titles and paying compensation. So, therefore, because the

Bill emanates from the RDA and its authority the question about procedural fairness, in a sense, does not arise. And there has always been some very grave legal doubt about whether procedural fairness ever mattered. The preponderance of legal opinion would be that there was not a racially discriminatory thing done by a land manager when that land manager could never have known that native title existed; and that the payment of compensation was sufficient to actually validate a past title.

- J: Has that been another concession by the Aborigines over the past few days?
- PM: Well, I think they understood implicitly that the concession was, in a sense, from the Government. That is, that we would employ the RDA rather than in any way circumscribe or override it, and validate using its authority.
- J: Mr Keating, the deal you've worked out with Aboriginal people on pastoral leases so that you can extinguish native title there - why haven't you done a similar deal for mining leases?
- PM: Because a mining lease is the one variety of lease which does not extinguish non Aboriginal title. A mining lease can be laid over non Aboriginal title and when the mining ceases, the title revives.
- J: But you said pastoral leases didn't extinguish either...?
- PM: The thing is, this is not so with other forms of title. But the symmetry here is that a mining title does lie across other forms of non Aboriginal title and the other forms of non Aboriginal title come back to full bloom, or are capable of coming back to full bloom, when the mining ceases. That is the principle which is being established.
- J: Is the land acquisition fund now part of this legislative package or is that coming with the social justice package?
- PM: It will be mentioned in the Bill, certainly the second reading speech and, I think, the Bill. But the development of it will come in a second piece of legislation in the Autumn session of next year. So that there will be a process of negotiation with the Aboriginal community who will then, with the government, sit down and try and design a set of arrangements where the control and the functions and the objectives of such a fund can be reasonably met - or successfully met. But Aboriginal and Islander people will know, when the second reading speech on the native title Bill is given and the Bill is introduced, that that will be an integral part of it

though it will not have been fleshed out in substance, that is, in terms of design.

- J: Did you get last night from the Aborigines, agreement on these last minute alterations in the package....?
- PM: Yes. I met the same group that I had met the previous week, last evening for probably an hour and a half, on and off. And we considered all these issues, considered the weight of Aboriginal community interests and where they lie when a lot of the claims go, about the probable success of litigation, down to what people really think they could secure vis a vis what was likely to be offered. And that's when, I think, those judgements were made.
- J: Once rural land has been acquired, Prime Minister, and converted to native title, it will then be the case that it can never be sold again?
- PM: Well, I think the thing about native title is that government can acquire it; it can be surrendered; but it will, I think, in the hands of the Aboriginal community, probably be in perpetuity.
- J: So, no matter how badly the property is run, no matter how badly run down it becomes - unlike existing farmland where, when things go wrong - it just stays on as it is?
- PM: Well, I don't think you should assume.... this is true with non Aboriginal holdings across Australia, David. A lot of farms are over grazed or poorly managed or where there is acute soil erosion - this is not something which would be a feature of Aboriginal holdings. In fact, I should imagine that given the success which Aboriginal people are having in managing land - and getting even better at it and understanding the value of land management - that they'll make pastoral properties succeed. But there is also the other thing - these are lands which will be traditional lands, which, of course, have other values and other connotations to them. So it has, if you like, a dual function of meeting a social need as well as an economic need. And my assumption is that Aboriginal people, given the opportunities to manage pastoral properties - and they've had now some substantial ones - can do it and do it well.
- J: Prime Minister, given that the farmers of Western Australia have an absolute right of veto over development, would you envisage in this passage that native title holders in Western Australia would have the same right? And if Western Australia does not come to the party in this, which it does not appear that they're going to, would native title holders in Western Australia who are dealing through a Commonwealth regime have

the same right - to get equity of rights with freehold farmers in Western Australia?

PM: Well that's a matter, I think, of legal opinion. I don't think we're certain about that. And, of course, Western Australia could make it certain by removing a veto right in the hands of non Aboriginal pastoralists. In which case there would be no discrimination. But again, the authorities of this Bill vis a vis the states, it's hard to say where the balance of that lies. I wouldn't assume, and I don't think I would say, that the presence of a veto right in the hands of Western Australian pastoralists will mean, ipso facto, that such a right exists in the hands of a native title holder. In fact, I think I would say the converse. But again, it will be a matter for legal opinion and also a matter for the state of Western Australia itself.

J: Prime Minister, you said this was a good deal for the states. Have you got any idea how many state Premiers will come on board now?

PM: Well, I spoke to Premiers Goss and Fahey late last week. I've spoken to Premier Kennett, I think, last week and again today and when I have an opportunity I'll speak to other State and Territory leaders today. Look, I think that the negotiations at the Commonwealth bureaucratic level and the state bureaucracies, about these issues, has helped put into focus the states' bottom lines on land management. We've been able to see what of that we can accommodate and what we can't. The great bulk of it has been accommodated. And I think that when they look through the Bill, a state land manager will say, "By and large, my prerogatives here, are met. The economic, the land management prerogatives here, are met."

But at the same time, met in a way which gives Aboriginal people a right to be asked about their property and a right to be involved in a real negotiation, not just a perfunctory one. Not a courtesy but a real negotiation. And in that, in maintenance of these state instrumentalities and state systems I should think most states will find it an acceptable package. And particularly as the Commonwealth is prepared to meet a substantial part of the cost.

J: Mr Keating, have you had any discussions with the Greens or the Democrats on this, so far? And do you think it will get through the Senate?

PM: Well, I've had a couple of discussions with them over the last two or three months. And the last discussion I had with them was in the company of Aboriginal representatives about two weeks ago. Two to three weeks ago. I've not since, but I believe they're committed to the same principles in this respect, that we are and that they wish to see an honourable

package fashioned here. One that does justice for Aboriginal interests but, at the same time, works. And so that is why I'm confident that the Bill will pass through both houses.

J: You said on the last page of this statement that greater recognition will be given to the value of regional and local negotiations. How will you facilitate those?

PM: Well it depends on how we wish to develop them and what prospects of success they would have. That is, whether or not regional agreements can be made - as is the case in Canada and other places. We're at least leaving that opportunity open. In some very obvious and discrete areas of the country such agreements might be made. Even though there is a patchwork quilt of titles there are very common threads to some of these titles and, therefore it may be possible to enter into regional agreements.

J: Are you confident that the legislation will actually get through this year, Mr Keating?

PM: Well, I am Laura, yes. I think it will proceed this year and I think it's important that it does.

J: Prime Minister, did you give any commitments to the Aboriginal representatives on the level of the funding for the land acquisition fund and do you have any idea of the ball park estimate on the compensation package?

PM: No, I can't go to that. That's something that the Cabinet has to consider. But it will be a substantial fund and it will be a revolving fund. That is, a proportion of it will be capable, a proportion of Commonwealth subventions will be capable of being spent on land acquisition but a portion will probably - I say probably - be reserved for a revolving fund so that the earnings base of the fund becomes, over time, the proceeds of the fund. It goes on in perpetuity. And, in such a way there would be a reasonable chance of success of it becoming a major acquirer and holder of Aboriginal property.

J: Mr Keating is the Commonwealth....(inaudible).... compensation for the extinguishing of native title even where states may not agree to the Commonwealth legislation?

PM: No. If a state does not agree, a state has to validate, but in validating it has to pay compensation. You see, these leases are state leases. These titles are state titles, not Commonwealth titles. The validations are to be

done now with the Commonwealth legislative authority, by the states. But if they are not in our scheme and cooperating then the compensation will be met by them.

J: Will you be expecting Mr Court to come on board with this?
...(inaudible)...

PM: Well, I spoke to him and I think he's coming over this week. But I have had no indication from him that he believes that Crown title should be, should fall to a native title claim. He doesn't believe that native title should be issued over Crown land. He believes the only titles that Aboriginal people should have should be statutory titles conferred on them. He believes that a conferred right is fine, but an inherent right isn't. Now, it's pretty hard from my position to argue with that because it's diametrically opposed to what Mabo stands for.

But, again, I think he's got to consider this in terms of the land management questions for his state. Because we've certainly considered it for Western Australia. We've taken fully into account that much of this variety of land is in Western Australia and that the interests of Western Australian industry - that is mining, commercial, pastoral - need to be taken into account and we have taken them into account, though we have not had a meaningful dialogue with the state government. But one doesn't need a meaningful dialogue with the state government to understand what some of its core interests are, so we've got them in there. But, in having very meaningful discussions with the rest of the states I'm pretty sure that what they regard as core interests, are anyway, the core interests of any Western Australian government and Western Australian people. So, I think the Western Australian community ought to be assured that the Commonwealth has very much had in its mind, its interest, in framing this legislation.

J: Is there a message for the Opposition, Mr Keating?

PM: Well, I think that the one message for the Opposition is that they have now consistently failed to be part of any negotiation. A number of business organisations invited the leader of the Opposition as long as ten or eleven weeks ago to join the Government in this matter. No response has come. In the meantime Mr Reith has been appointed to basically do to the Mabo legislation what he thinks he was successfully able to do to the four year parliamentary term referendums. Now, Mr Reith was one of the architects of Fightback! and Fightback! was a dismal political failure and I think that his tactics on Mabo have been a dismal political failure, too.

Ends.