

MASTER

**PRIME MINISTER**

**TRANSCRIPT OF THE PRIME MINISTER, THE HON P J KEATING, MP
INTERVIEW WITH PAUL LYNEHAM, 7.30 REPORT, MELBOURNE, 9 JUNE
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PL: Prime Minister, welcome again to the program.

PM: Thanks Paul.

PL: When we get down to basics are we talking about a different attitude towards Aboriginal Australia between, say yourself, and Premiers Kennett and Court?

PM: I think so, yes that's right, yes I do. I think there is not the willingness there ought to be to accept that the High Court has made a seminal decision and it's the Governments of the Commonwealth and the States to set up mechanisms to respond to the hearing and awarding of Native Title in accordance with the decision of the High Court.

PL: Could it be that you are too far out in front of community opinion?

PM: No, it is not a matter of community opinion, it is a matter of the law. The High Court has said that there is a Native Title in the common law and it has existed since settlement in 1788, not in a sense, we will use the word, discovered until June 1992, but existing from 1788. Now I would like to say for the purpose of your viewers who are not certain what the legal position is, it doesn't mean that large parts of Australia, particularly of the built up areas of Australia, the urban areas of Australia will be subject to a native title claim. Where freehold title has been issued the native title has been held to have been extinguished, where a lease hold has been issued, the native title in most cases, or in many cases has been extinguished.

PL: So these enormous claims we have seen in recent days, I mean the entire ACT for example, that's a nonsense?

PM: A nonsense. It has got nothing to do with Mabo.

- PL: And not very helpful to you I would have thought?
- PM: It's a tactic of some of the extreme elements of the Aboriginal community, it has got nothing to do with Mabo, has no chance of succeeding and as a sense this particular process.
- PL: Now you began these talks here today with some Premiers wanting simply to, if you like, forget that Mabo had ever happened, extinguish native title across the whole of Australia.
- PM: There was, if you like, an unwillingness on the part of some Premiers to accept that the High Court has made a seminal decision to be less than, if you like, accepting of the fact, or in fact to debate the High Court's right to make a decision about native title. Well of course this may be interesting for them, but of no interest to me. The High Court has made this decision, native title does exist and it is now up to the Governments to see that the methods are put in place to hear native title, to dispense native title and to validate all the leases which are put into question.
- PL: So, when the Western Australian Premier says that these key decisions in our national life should be made by elected leaders, you say well that's a nice idea, but that's not the way it is?
- PM: No, I said to him today, we have got a constitution which is made up of an executive, a legislature, a judiciary and the judiciary, our High Court makes decisions about these sorts of matters and it has made a decision about native title. There is no appeal to that decision, there is no privy council and nor should there be and therefore the law of that decision should be respected by all governments in Australia and his in particular whether he likes it or not.
- PL: Last night, fairly late last night, you thought didn't you that you were about to come pretty close to getting some sort of agreement here?
- PM: I thought I was moving towards an agreement, yes.
- PL: What sort of agreement did you have hopes of at that stage?
- PM: One where the Commonwealth's said for its part it would validate all leases that were issued since 1975.
- PL: The year of the Racial Discrimination Act?
- PM: The year the Racial Discrimination Act was introduced and I made what I thought was a generous offer of the Commonwealth paying any compensation arising from eighteen years of the issue of that lease.

- PL: So whatever leases the States had issued you would pick up the tab?
- PM: We would pick up the tab which was an exceptionally I think generous offer from the Commonwealth.
- PL: And what else was part of the plan?
- PM: In return they had to agree to the establishment of a set of tribunals under Commonwealth guidelines, but set up in the States to hear native title claims and award native title and to adopt some principles on the way through such as the protection of native title and its revival there after; after a particular purpose had ceased.
- PL: This system for hearing claims for native title, this could apply to future leases?
- PM: Future leases that is right.
- PL: What went wrong last night?
- PM: Premier Kennett unilaterally told the meeting about 10:30 pm that he had had enough of this, he was going to legislate unilaterally, that he had advice that he could validate the leases by a decision of the Victorian Parliament and that he would then legislate to dispense native title in Victoria and where that native title was inconsistent with a commercial purpose, he would extinguish the title.
- PL: And where native title was found to be proved he would pay compensation?
- PM: He would pay compensation.
- PL: But he doesn't expect to have to pay very much at all does he?
- PM: No, because most of Victoria, the native title has been extinguished by freehold title over the last ...
- PL: Being such a closely settled State.
- PM: Yes, over the last one hundred and fifty years, there is very little unalienated crown land, other than state forest and national parks which is not true of Western Australia, it is not true of Queensland, so in a sense his response was sort of a beggar my neighbor response, it wasn't going to cost him anything like as much to choose this path as it would have cost Queensland or Western Australia.
- PL: Can he legally do this?

PM: He has been advised so though Commonwealth legal advisers would doubt this is so and we have expressed those doubts in the document we published a week or so ago which says that legislation in the Commonwealth Parliament is the only certain way of validating leases. Now, it may well be that the States can validate leases, if they can, good. They issued the leases, they issued these grants of interest in land, not just leases, but grants of interest in land over the last eighteen years. They have been the land managers so if they can validate their own leases and pay the compensation well, that is not a problem for me. I say good, if they can do that good.

PL: How did you react to Premier Kennett's sudden flourish?

PM: I thought it was disruptive of the spirit of the discussion and again this ad hoc approach to things, it is not the way a matter like this, a national matter should be dealt with. If ever there is a decision handed down by our most supreme court, our High Court about the indigenous people of this country that requires a national response.

PL: And you were prepared then though to make some compromises this morning weren't you?

PM: I proposed again a change to our document to indicate that it would be possible to agree to a package provided that the States understood that the High Court has made an historic decision, the decision being that a native title existed in common law, that it was not extinguished by the acquisition of sovereignty in 1788, that survived sovereignty in 1788 and that we had to establish the mechanism for tribunals to hear and dispense native title. Premiers Court and Kennett would have no bar of that and other Premiers who might have accepted that and some would have found there was no point in them accepting it.

PL: Premier Kennett says an agreement was possible here, but Paul Keating wanted to do too much, to go too far, you wanted to solve the entire Aboriginal question once and for all by linking everything on to the Mabo issue.

PM: I don't doubt for a moment that Premier Kennett sees attractions in that glib line, but that is not true. He and Premier Court wouldn't embrace even the primary remedial policy changes to give effect to the core of the Mabo decision, not the add ons or the embroidery or anything on the edge of it, the core issue.

PL: We now have Victoria, New South Wales and I gather Queensland at least planning their own legislation now to validate those leases between 1975 and now. You can understand they have got to give certainty to business don't they?

- PM: Absolutely and if they can by the passage of legislation through their houses of Parliament do that and pick up the compensation.
- PL: That you would have otherwise been prepared to ...
- PM: No, but you have got to understand that the cost of compensation to Victoria will be minuscule compared to the cost of compensation to Western Australia or Queensland.
- PL: So, we have been here now for the best part of two days, you have worked right through into the night, we have got effectively what - nowhere?
- PM: Let me say this. We have as a Commonwealth government as a ministerial committee of the Commonwealth been at work now for a couple of months on this. We produced a highly informative document which the States have had a copy of now for over a week, we refined that to 33 key proposals and then refined it down further to what we call the core issues yesterday and today. The States have had their own legal advice. The Council of Australian Governments is an executive body, when a Premier comes to this body they are there to make decisions, not to have studies or to go back and consult but to make decisions.
- PL: They have Prime Minister, they have said no.
- PM: They have made a decision, they wouldn't make decisions to embrace the core proposals to deal with the High Court decision.
- PL: OK, so we have this executive body meeting, the big white chiefs of Australia in a pow wow, what message does this now send to Aboriginal Australians?
- PM: I think Premiers Court and Kennett have to get to explain to the Aboriginal community why native title as a concept so rankles of them, why they are not prepared to hear native title claims and have them dispensed and I think they have got to explain to the business community why they have refused a generous Commonwealth offer to validate the titles and pay the compensation.
- PL: And what message does it send to investors if you were sitting in Tokyo right now wondering whether to put \$100 million into a mine in Australia?
- PM: That is a different issue. They can issue from now on valid grants of interest in land providing they follow two key points of procedural fairness and compensation, they can issue from here on valid interests of grants of land. But each interest in the land extinguishes the native

title unless we provide for a revival of the title when the economic purpose is finished.

PL: So I want to develop a mine. I've then got to advertise, the State government has got to advertise the potential native title of it?

PM: Yes, it has got to advertise. If there is an area of land that the State wishes to develop it has to advise potential native title holders or the Aboriginal people of the region or maybe Land Councils that it seeks to exercise an instrument over a grant or a grant of interest in particular land.

PL: How long will this hold me up for? How long does this hold up the process?

PM: I don't think it is effectively a holding up process at all because even if it takes a number of years for a native title claim to be heard and dispensed it doesn't stop the valid issue of the lease or the interest.

PL: But I don't know as a business person what compensation I am up for down the track do I?

PM: In the legislation that I was proposing at this meeting we would have guidelines for the compensation so a business would have an idea of what the cost would be further down the track. The key point is Paul that the States can now issue a valid lease, a valid grant of interest in land.

PL: Have you perhaps pumped up average expectations too high. I mean there will be a lot of disappointment out there?

PM: It is not only me pumping it up. You have got to understand this. This is something I have said to them on a number of occasions and I'll say to you that this decision was not a decision of the Commonwealth government, it was a decision of the High Court of Australia....

PL: But you're linking it with reconciliation.

PM: ..In a matter between Meriam people and the State of Queensland. The High Court held in favour of the Meriam people, and in doing so created a historic decision, it is that we are responding to. So, it is not a matter of the Commonwealth government-building up expectations, it is simply a matter of law which has to be dealt with.

PL: And how will you go forth from here?

PM: We will I think, as a result of the day, we'll consider our position and see where we think how best we should respond.

- PL: There's talk of drafting legislation.
- PM: Well we'd be drafting legislation anyway, because we haven't had a frame work legislation within which these State tribunals could operate. So, we will go ahead and do that anyway, but again we will be considering our position. But can I also say that the meeting, the Council of Australian Governments, considered many other matters, reform in water, electricity, gas, micro-economic reform and other matters between us, and that was quite a successful feature of the meeting. But the most important one could not be agreed upon. While it is the resolution of the impact of the High Court decision in respect of native title.
- PL: You said several times that you thought that the Mabo decision was a great opportunity for Australia, are you still of that view?
- PM: Yes, because it is the classic evener up, it is the thing that gives to Aboriginal Australians an interest in land which has been theirs under the common law since settlement. It has a wholly different character to statutory land rights, land given by statute from a Parliament to an Aboriginal community. It has more inherent dignity in the sense that it is available to a native type of hold, and as such it means that this possession which came with the settlement and the concept of terra nullius, the land of no one, has been overturned by the High Court and Australians community can go forward together on the basis of the quality of access and availability to land.
- PL: Finally, comments by people like Tim Fischer, that this is the guilt industry, that this was done by vastly distant past generations, not our generation, we shouldn't bear the cross.
- PM: Well that's wrong, that's a prejudicial view, and it is a wrong view, it has nothing to do with guilt, it is a matter of law. In Captain Cook's instructions he was told that in establishing a settlement in Australia that he should proceed with the consent of the native people. So, even back then the consent of the native people was an issue. Of course in New Zealand there was the treaty of Waitangi, whereupon the Maori and the Crown came to a decision about the development of that country and their particular rights. This didn't happen in Australia, we had this concept of the land of no one which the High Court now overturned.
- PL: And you will be back with the Premiers again in the next couple of months, will you, to keep trying?
- PM: Well we have got a Premiers Conference, a financial Premiers conference meeting in July but at each meeting we are not prevented from discussing any matter financial or otherwise. But they have got to

show a willingness to accept the decision of the most supreme of our courts, the High Court.

PL: Prime Minister, thank for your time.

PM: Thank you.

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