



PRIME MINISTER

**TRANSCRIPT OF THE PRIME MINISTER, THE HON P.J. KEATING MP,
QUESTIONS AND ANSWERS, PRESS CONFERENCE, COAG MEETING,
MELBOURNE, 10 JUNE 1993**

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Q: What do you want to do from here Mr Keating?

PM: We will reserve our position and go back and think what response there should be. The States have said, Premier Kennett last night when this debate was proceeding quite well unilaterally told us that he wasn't having a bar of these points and that he would unilaterally legislate in his Parliament to validate the titles. I said, well if States believe they can validate the titles and pay the compensation after all you issued the leases, you issued the grants of interest in land, if you can validate the titles and pay the compensation - fine, do it.

Q: Do you believe they can?

PM: It may be possible, but if you look in our text at page 25 we say the question needs to be addressed whether the failure to accord such procedural requirements to native title holders is in breach of the Racial Discrimination Act. To validate the titles there are two things which have to happen. There has to be (1) compensation paid, that is for the title to have been issued in a non-discriminatory way there had to be compensation paid and procedural fairness. There can not have been procedural fairness when no Aboriginal person would have been engaged largely in the issue of these grants of interests say 15, 10, 12 years ago. The question is whether and I think we have got another reference at page 48, if this is so then the actions to be taken now to validate past grants and which affect native title may need to conform with relevant procedural requirements, and it goes on Commonwealth legislation would be possible to adjust or remove the procedural requirement under the Racial Discrimination Act. Premier Kennett told

me last night that he had had legal advice that Victoria, the Victorian Parliament could validate Victorian leases and that he would carry the compensation, but of course the cost of compensation in Victoria would be just miniscule compared to the cost of compensation in Western Australia or Queensland. So it was a Victoria first policy and everyone else later.

- Q: Prime Minister, how do you view Premier Court's claim that Western Australia is a special case given the amount of land that is likely to be claimed.
- PM: A special case in what sense?
- Q: He argues it is a special case because of the amount of crown land and leases that may be subject to Mabo style claims.
- PM: I don't follow his point there, special in what respect?
- Q: For example the difference with Victoria was that the view was that they have managed to extinguish a lot of the native title ... should only have the same level of compensation ...
- PM: That is true and that is why I am sure a number of Premiers were somewhat taken aback by Premier Kennett's insistence that he could validate titles and pay compensation when they knew the costs of compensation could be very large.
- Q: What do you think the effect will be of Mr Kennett's planned actions?
- PM: What he says he seeks to do is to validate the titles. Understand this these grants of interests in land have been issued by state land managers. If the States can validate the titles and pay the compensation so that the grants in interests have been validly issued fine, but you have got to remember that the Commonwealth offered to pick up all the compensation and to validate the titles.
- Q: Would you now impose on the States through Commonwealth legislation ... native title?
- PM: I said in our proposal that the Commonwealth would legislate to establish a framework for the recognition, protection and management of native title and that the Commonwealth would establish tribunals which would operate in the absence of similar appropriate mechanisms in the States. In other words if a State was prepared to establish its own tribunal and after all land management is a State issue so if the States establish tribunals that operated in accordance with the Commonwealth framework, that would be fine. But part of the proposal always was that the Commonwealth would establish a framework.

- Q:** ... could legislate to recognise native title, establish tribunals to award native title in the future?
- PM:** I think the Commonwealth has that power.
- Q:** Will you use it?
- PM:** Again, we have got to consider our position again. I know that Premier Kennett said to you that we were insisting on a couple of issues what he calls beyond Mabo such as a national fund for land acquisition. You have got to understand this - It is only Aboriginal and Torres Strait Islander people who can demonstrate a connection with the land, a continuing association with the land who will succeed in a Mabo claim. For many Aboriginal and Torres Strait Islander people they will receive no benefit from the Mabo decision therefore for those dispossessed of their land, unable to make a claim there needs to be another social justice package of land acquisition which has to be part of the spirit of the Mabo decision. Premiers Kennett and Court and others reject that, but the argument from them is I'm sure to you that the Commonwealth would not agree with their proposals because of our insistence on these extra Mabo positions. The reasons there was no agreement today is they would not accept the core proposition that the mechanisms had to be established to hear and award native title claims. They would not accept that proposition and so therefore there was no and could be no agreement.
- Q:** Mr Keating, what does the breakdown of this conference mean to the nation?
- PM:** I think as I say in the statement Premiers Court and Kennett have got to explain to their communities and their business communities how when the Commonwealth has offered to validate these titles and pick up all the compensation they rejected the offer and how they believe they can bring certainty to these titles when in fact it was there and explain to the Aboriginal and Torres Strait Islander people of this country why they won't accept the need to give effect to the High Court decision. The problem is a number of Premiers take the view that the High Court doesn't make law and that there is an executive over-ride on the part of governments available to us. A part of yesterday's discussion was about a wholesale extinguishment of native title across the country, that States would simply legislate away native title across the whole of their States.
- Q:** Does the inability to make any decision today send any message to the international business community?

- PM:** No, these questions of native title arise in many countries and we have got a seminal decision here with the High Court made in June 1992 and we have got to come to terms with it. I indicated to the States and this is a very key point; there is nothing stopping a State issuing a valid lease meeting the requirements of the Racial Discrimination Act for procedural fairness and compensation. There is nothing today stopping a State lands manager issuing a valid lease. What we are talking about is the past leases.
- Q:** Prime Minister when you talk about proposed legislation for a national framework, is that to address native land title claims of the future ... still leaves a question mark over the 1975 to 1993 validation.
- PM:** No, the proposition we put was an all encompassing one; to validate past leases, pick up the compensation, establish a mechanism for hearing and awarding native title now and provide a basis within which States can issue valid leases from here on.
- Q:** But you are talking now about the option of the Commonwealth legislating on its own.
- PM:** No, I was asked that and I said we will consider our position but the Commonwealth was always going to legislate guidelines for the operation of State tribunals in the hearing and awarding of native title. Whether the Commonwealth now moves to unilaterally to a regime is a matter for us to decide.
- Q:** ... In your statement ... legislation to set the framework for the awarding of native title, what exactly does that mean, just a draft ...
- PM:** No, we will start the drafting process of drafting the framework legislation.
- Q:** Not necessarily legislate?
- PM:** But not necessarily legislate.
- Q:** When will you continue to discuss this draft legislation?
- PM:** This is a matter for Premiers but there is no point in Premiers telling me that their State communities don't accept the High Court decision as though I am supposed to take that as some sort of profound piece of political advice. Communities in this country have to accept the High Court decision as I have to accept the High Court decision.
- Q:** Prime Minister, given that there is no mechanism in place to recognise native title and the States in your account are refusing to do that, how

can there be any exploration or mining lease or ... be issued from this point on if it doesn't contravene the ...

PM: Because if a native title holder is not established but a State wants to issue a grant of interest in land over a particular locality where native title may be claimed, States can advertise the fact in newspapers that they are interested in awarding a grant of interest in land over a particular locality, they can write directly to a land council or to the people in the area, the Aboriginal people in the area who may have an interest in the matter and advise them that they are considering issuing a grant and to speak with them about it and then make clear that the matter of compensation will be paid if and when a native title is granted. That way a lease can be validly issued and that is where the commercial interest comes in, a lease can be validly issued.

Q: ... no one ever establishes native title ...

PM: No, no what I'm saying is in the interim where a claim for native title hasn't been heard or awarded provided that the State has followed a non-discriminatory procedurally fair process of notification and is prepared later to arrange the compensation the two key points of procedural fairness and compensation are covered and therefore the grant of interest in land can be validly issued.

Q: What do you think it will do to certainty in Victoria, Western Australia and perhaps New South Wales to go ahead with their own legislation to do validate past leases?

PM: What would it do to certainty?

Q: Yes.

PM: Leasees would need to be certain that the legislation competently validated the leases.

Q: Are you going ahead, can they actually be certain of that?

PM: Not entirely certain of that in terms of the advice the Commonwealth has had.

Q: In that case do you have the option then but to go ahead with your own legislation to prevent that sort of filleting off of the States?

PM: No, we made it clear that in respect of say pastoral leases that if you have got a lease of 20 years which is renewed every twenty years, so it might have been renewed five or six times over a one hundred year period that that sort of lease we would take it, that that type of lease extinguished the native title. But obviously a lease of say 10 or 15 years

over an alluvial gold deposit shouldn't necessarily extinguish the native title and it should be able to revive. We are looking at the principle of protection of native title for past leases distinguishing between the continuing type pastoral lease or the tourism lease from say a mining lease.

Q: ... (inaudible)

PM: I don't know it may be if the States have been legally advised that they can validate the legislation, that they in fact can and pay the compensation because they issued the leases and the grants of interest in land in the first place; they are the land managers. So if the land manager can through its Parliament validate the leases and pay the compensation then I've got no problem with that.

Q: Don't you need accompanying Commonwealth legislation to make that compatible ... notwithstanding the ... Racial Discrimination Act ...

PM: Well that is the issue under question.

Q: Prime Minister, isn't Mr Kennett virtually challenging the Commonwealth and all Aborigines to have a go at what he is proposing now again in the High Court? He said to us here today that what he is putting up in his ten points on his legal advice is within the finding of the High Court.

PM: State Premiers will say what their advisers tell them in terms of the law, what they believe to be their legal position and that is up to Mr Kennett, but you have got to understand this about Victoria, most of Victoria native title is extinguished by freehold title. This is not true of New South Wales, Queensland, the Northern Territory and Western Australia and therefore the number and variety of leases which might have had a native title claim and which might have been issued invalidly to be validated by compensation would leave a much smaller compensation bill in Victoria than any other State. So Mr Kennett's unilateral approach is basically a beggar thy neighbour approach as far as the other States are concerned.

Q: Mr Keating, on the more social agenda and the reconciliation process do you think that some of the rhetoric that Premiers have used are divisive and does threaten to jeopardise the reconciliation process?

PM: Leave my views about their approach to reconciliation process to one side. Having discussions about whether the High Court can make law and whether their States have the option of ignoring a High Court decision is taking us nowhere, absolutely nowhere. How do you deal with that sort of discussion?

- Q:** Do you regret you didn't talk with more the Premiers, so that some of them who appear not to have a great understanding of the issues might have had their minds around it ...
- PM:** Everyone understands the issues, everyone understood the issues I think, perfectly because for a start they have had their own advice, they have had extensive briefing papers, they have had our own paper which I think is a very comprehensive and good document which the Commonwealth Ministerial Group has put much time into as has our Officials Working Party and COAG is an executive body; you come along to agree things. The reason you have a heads of Government meeting is because officials can't agree things, so the Premiers and Chief Ministers turn up to agree things. The proposals we had said we will validate the titles, we will unexpectedly in their terms pick up the compensation which was never on the table, it was an offer from me to pick up the compensation, but you must agree to a process of hearing and awarding native title and they say no.
- Q:** How much in compensation would it cost the Commonwealth?
- PM:** That is a matter for judgement
- Q:** ... (Inaudible)
- PM:** We will consider our position and I think the States will consider theirs. Yesterday this meeting went along with a reasonable degree of bonhomie with people trying to feel their way through the issues and I was taking some of the Premiers who I felt were not certain of our approach through the issues, but as we were making our way last night Premier Kennett unilaterally said we are going our own way we will legislate, we can fix the leases, we will extinguish native title and issue a statutory title where it suits us and what do you think about that? And we said we would think about it over night.
- Q:** How much ground had you given ...
- PM:** Nowhere in our proposals was the proposition that we would take up compensation for the past leases. That is eighteen years of leases and as well as that I adjusted the terms under which State tribunals could operate interfacing with the Commonwealth guidelines but provided that we set up tribunals to hear and award native title then on a number of other issues I gave substantial ground but they wouldn't give any ground. That was the point. They wanted the Commonwealth to validate the leases and pay the money and they would agree to hear and resolve issues raised by native title and would accept the High Court judgement in Mabo that there is native title.
- Q:** Did you give away any particular rights ...

PM: Because we didn't agree to anything we didn't give anything away.

Q: But did you offer to the meeting that you already told the Aborigines there would be no absolute veto and under your proposal ... and also on the question of extinguishing you had given ground there to extend most native title revive after the future ...

PM: Most native title wouldn't revive, no, I was taking a contrary view that we had to protect native title and give it a revival, give it the possibilities of revival, that is co-existence of title. This was one of the points that they wouldn't accept.

Q: ... (Inaudible)

PM: Even if a mine lasts sixty years, it is better that native title reverts to the native title holder than have it extinguished.

Q: ... (inaudible)

PM: In the matters of principle I think that is true. I think the other Premiers and Chief Ministers would have come to the party if a package was coming together. Now on sort of nuances maybe they would want some things corrected, but by and large perhaps other Premiers understood the import of the package.

Q: ... (Inaudible)

PM: I said I was prepared to try and define it and of course that is a very large subject, I mean mountain chains, chains of mounts can have cultural significance to Aboriginal people so it is a matter which is very broad, but there had to be a willingness to embrace the whole package. It was largely a good natured discussion, but that is beside the point. The point was that the States would not take any executive decisions.

ends.