



PRIME MINISTER

STATEMENT BY THE PRIME MINISTER, THE HON P. J. KEATING, MP

MABO LEGISLATION

Today marks an important point in the Government's resolution of the Mabo issue.

The Government is releasing a detailed outline of its proposed legislation. The legislation will resolve the uncertainties created by Mabo while ensuring that native title is treated with fairness and justice.

Our proposals are also today being sent to State and Territory Governments, Aboriginal and Torres Strait Islander representatives and relevant industry bodies. We wish to proceed expeditiously, but also wish to provide a reasonable opportunity for consideration of our proposals. Final decisions will then be taken by the Government, a Bill prepared and the legislation introduced into Parliament in October.

The legislation will necessarily be complex. The issues are complicated ones.

But running through the complexity and the detail are certain clearly drawn lines of policy and principle:

- 1) ungrudging and unambiguous recognition of native title in Australian law;
- 2) a fair, rigorous and efficient means for determining who has native title, where, and what the key attributes of that title are in particular cases;
- 3) a just and workable regime under which dealings in land can go on, and which provides clear processes within which our vital land based industries can operate;
- 4) the right of Aboriginal and Torres Strait Islander people to be asked about proposed actions affecting native title land, but without any special veto or "locking-up" of the land;
- 5) full security for people holding grants of interests in land provided by governments in the past, and at no cost to them;
- 6) fair compensation for any extinguishment or impairment of native title rights; and

- 7) an opportunity for the States and Territories to manage dealings in land which affect native title so long as they meet the standards for recognition and protection of it set out in the Commonwealth legislation.

These are the solid, principled foundations of our policy. They respond to the calls by industry for certainty and for clear rules under which land dealings can proceed. They respond to the equally legitimate demands by Aboriginal and Torres Strait Islander people for the rights accorded by the High Court decision to be respected in Australian land management. They respond to the calls by the States and Territories for recognition of their key role in dealings in land under our Federal system.

And they respond, I am sure, to the wish of the wider Australian community – namely that Mabo be accepted, but also that it be made to work.

Ours is no jerry-built proposal designed to provide a quick fix for this or that particular sectional interest. We are building something to last, because the implications of the High Court's decision will now be with Australia forever. It is fatuous, unjust and impractical to the point of irresponsibility to suggest that the decision might somehow be ignored or overturned. And any policy which sees only one side of the equation is destined for failure.

From the outset the Government has had twin aims:

- justice for Aboriginal and Torres Strait Islander people in relation to legal rights granted by the highest Court in the land; and
- the integrity of our land management system as one of the foundations of our economy.

The alternative to simultaneous achievement of these two goals is conflict, antagonism and endless litigation. We need a coherent, balanced approach which achieves a reconciliation of the two goals, a reconciliation managed by Government rather than left to fate in the courts. Our proposed legislation – alone among any so far proposed in Australia – will do this.

Let me now highlight the main provisions.

First, the Bill will remove any doubt which the existence of native title creates about the validity of existing grants of interest in land. Nobody holding any land tenure need have any fear on this score once our Bill is passed.

Second, the Bill will not leave up in the air what implications this validation of past grants has for existing native title. It will make clear that for freehold, and for residential, pastoral and tourist leasehold grants, the validation extinguishes any native title rights inconsistent with those grants. For mining leases, and lesser interests over land such as licences and permits, the validation will not extinguish the native title. But the Bill will confirm that any native title is subject to the lease or licence for as long as it runs. I emphasise that this is totally consistent with existing practice in relation to mining leases over other private interests in land.

Third, the approach to validation will preserve native title to the maximum extent possible. Those who would like to see wholesale extinguishment should be required to answer this question: How can it be just to end an Aboriginal legal right which has, by definition, been preserved for hundreds and perhaps thousands of years in order to validate an invalid grant when there is no need to do so to achieve that objective?

Thus:

- the Bill will permit the reassertion of native title rights at the conclusion of a mining lease or lesser grant; and
- it will protect any legal rights of native title holders which can co-exist with the rights under the grant.

Fourth, in validating past grants, the rights which people may have to renewals or extensions in the future will also be protected.

Fifth, having cleared up the problems of the past, the Bill goes on to provide a comprehensive framework for future land management by the Commonwealth, State and Territory Governments. This will allow dealings in land to go on efficiently, but with native title being properly taken into account. The Bill recognises three basic ways in which future dealings affecting native title land can proceed:

- it makes provision for conversion of native title to statutory title, should Aboriginal or Torres Strait Islander people wish. In this way they have the flexibility to deal with the land, for example leasing it for tourist development or selling part for a mining project;
- it makes provision for acquisition of the land by a government (for example for some essential public purpose) and for the extinguishment of native title in this case. The native title holder would be afforded the same protections of fair process which apply to anybody else; and
- the Bill will provide fair and workable processes of notification, negotiation, arbitration and determination where a government proposes to make a grant of interest over the land. The native title will be subject to the grant for the period of the grant, not extinguished by it forever.

Sixth, the Bill recognises that some grants (for example a major mining lease) will have greater impact on native title holders and their land than other grants (for example most exploration licences). We are therefore providing an expedited process for decisions about grants of the latter kind, a process which still however affords rights to Aboriginal people to be asked and to have their say.

Seventh, the Bill provides processes for managing dealings in land in the inevitable interim period before we know whether native title actually exists in a particular area. There must be no hiatus. Land dealings cannot come to a halt. The key here is appropriate notification of, and consultation with, bone fide claimants and relevant Aboriginal organisations.

Eighth, the Bill gives Aboriginal and Torres Strait Islander people a right to compensation on just terms where native title is extinguished or impaired – whether in relation to validation of past grants or the issue of future ones.

Ninth, the Bill will establish a National Native Title Tribunal, comprising:

- Judges of the Federal Court who will hear native title claims and determine the existence, boundaries and attributes of native title over particular land;
- the Tribunal Registrar, who will register claims and decisions about native title, and will need to be satisfied that a claim meets certain standards before it is registered;
- Tribunal Assessors, who will mediate claims; and
- Tribunal Members who will assist negotiations between native title holders, governments and people seeking grants, and make decisions if negotiations fail to produce an agreement.

Tenth, the Bill will permit the Commonwealth to accept State and Territory bodies in place of the Commonwealth Tribunal – and State and Territory processes for the handling of grants of interest in land – if they meet the criteria set out. There can be no legitimate complaint that we are putting the States in a strait jacket – they have the option to come up with one of its own which equally well satisfies the objectives.

Finally, the Bill will make certain provisions in the interests of the community as a whole:

- that laws and regulations of general application apply equally to native title land;
- that governments are able to confirm existing Crown ownership of resources; and
- that existing public rights of access to such places such as beaches, waterways, recreation areas and so on can be confirmed.

With this proposed Bill the national government is accepting its national responsibilities. The Commonwealth has profound obligations to Aboriginal and Torres Strait Islander people, to the protection of their rights under the law and to the betterment of their economic and social condition. We also have profound obligations to all Australians for the security of their rights in land, and for the wellbeing of the national economy.

Others may feel they have the luxury of taking a narrower view, of pushing a particular interest or of following the instincts of short-term political expediency. We do not. As Australia's Government we cannot.

Regarding the role of the States and Territories, I reiterate what I have put to them – namely that the Commonwealth's preferred approach is complementary legislation, co-operatively achieved. Therefore, as well as inviting their comments on our

proposed legislation, I invite State and Territory leaders to join with us in a national approach. Our proposal

- permits the States to run their own land management, with the Commonwealth performing the role most appropriate to it; setting national standards and establishing an overall framework;
- provides legal certainty to the States that they are able to validate existing grants;
- provides clear and fair "rules of the game" for dealings in land and to assist economic development; and
- can be underpinned by the Commonwealth's preparedness to accept an appropriate responsibility, with the States and Territories, in relation to funding.

This legislation will not satisfy everybody's demands. It would not be good legislation if it tried to do so, and such an enterprise would be impossible. Rather, our proposal is the product of intensive consideration of each of the issues on their merits. In this way we have achieved an approach which has consistency and integrity.

It is also the product of the extensive process of consultation on which the Government very deliberately embarked last year. We have not been deterred in that time by pressure, misinformation or hysteria from the pursuit of good, durable policy. We have stuck to the timetable announced at the outset. The outcome will be all the better for the time that has been taken to hear, understand and reflect upon the views that have been put.

This proposed legislation gives Australia a way of settling the land management challenges posed by Mabo. But the Government remains committed to the view that the significance of Mabo does not begin and end there.

The crux of the matter is that the High Court has formally recognised what should have been accepted long ago – that Australia was not Terra Nullius, a land belonging to no-one when the Europeans arrived. There were prior owners. They were often dispossessed.

To understand this deeper significance of Mabo is to recognise that it provides an opportunity and obligation – an opportunity for Aboriginal and Torres Strait Islander dignity in our society and for genuine reconciliation; an obligation to press forward with initiatives directed towards greater justice and economic development for Aboriginal and Torres Strait Islander people.

As a second stage in our response to Mabo, I expect to make announcements about these wider matters later in the year.

CANBERRA
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