

(1)



## PRIME MINISTER

### TRANSCRIPT OF THE PRIME MINISTER, THE HON P J KEATING, MP PRESS CONFERENCE, PARLIAMENT HOUSE, 2 SEPTEMBER 1993

#### E&OE PROOF COPY

Well, look, I have called this press conference today, because today marks an important stage in the Government's resolution of the Mabo issue. Today the Government has released a detailed outline of its proposed legislation, which will resolve the uncertainties created by the High Court decision on Mabo while ensuring that Native title is recognised and treated with fairness and justice.

From the beginning the Government has had two essential aims with Mabo. One was justice for Aboriginal and Torres Strait Islander people in relation to rights granted by the highest court in this country, the High Court; and the integrity of our land management system as one of the essential foundations for our economy.

There has never been any doubt in my mind that an adequate response to the Mabo judgement had to meet both of those objectives, the objective of justice and at the same time the integrity of our land management system.

The legislation is complex because the issues are complicated. But we have drawn clear lines of policy and principle including un-grudging and unambiguous recognition of Native Title in Australian common law; 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; a just and workable regime under which dealings in land can go on, and which provides clear processes with which our vital land based industries can operate and full security for people holding grants of interests in land provided by Governments in the past, and at no cost to them; and fair compensation for the extinguishment or impairment of Native Title.

Now, contrary to so much mis-informed opinion and mischievous propaganda, the vast majority of Australians will, of course, feel no tangible effects from this legislation whatsoever. What they may well feel is a sense of satisfaction that Australia's democratic processes in harness with our better feelings, our sense of justice and common sense has produced a mature national response and the biggest chance the nation has ever had to correct a two hundred year old problem, a real chance to address the wrongs and achieve our goal of reconciliation between indigenous and non-indigenous

Australians. They may feel that their generation has made a mature response and future generations will be grateful for that mature response.

Neither I, nor the Government, expect that the draft outline will be welcomed in toto by every interested party in the debate. I can almost guarantee that will not be so. But a balanced approach was taken, a truly balanced approach, and a balanced response has been made. The proposed legislation is the result of one of the most comprehensive consultations ever undertaken on a national issue in this country, and one of the most intense periods of ministerial involvement and discussion of any issue in the Government's history.

Since the High Court handed down the decision many meetings and consultations have been held with Aboriginal and Torres Strait Islander people, with the mining industry, with the pastoral industry and with State and Territory officials. And while the draft released today is not the final Government position, it does reflect the Commonwealth view on key issues. Today I have written to Premiers and Chief Ministers providing copies of the document and seeking comments before the final bill is drawn up, obviously States and Territories will have comments to make, but the important thing is, I hope, they will see the merits of a national approach and understand the obvious advantage to them in such a national approach, and these advantages are outlined in the detailed statement that I have released. No doubt other parties will also have suggestions and we will listen to them just as carefully. But what you do have before you today is a very carefully considered view of the Government. When comments have been received we will finalise the Bill for introduction into Parliament in October.

Now, our information package which we have tabled with the draft legislation contains a detailed statement by me which highlights the main elements of our proposal. Also there is a detailed summary of the proposed legislation and a question and answer document which I think will help people understand some of the principal issues. I might also add that my colleague, Frank Walker, who is here today and officials that are also here, will be available after Question Time if you have questions of technical detail about some of the issues in the Bill.

So, I will be pleased to take questions.

J: Prime Minister, does this mean now that you will be prepared to sit down and begin negotiating with the Aborigines?

PM: Let's not have a play on words. A consultation of substance is one where an interest group puts to the Government issues of principle about which it believes the Government should respond. And because the imperatives in the development of this legislation require that the twin interests, of justice for Aboriginal people and maintaining a system of sensible land management are key to the national economy, whatever is put by an Aboriginal person or group, in a sense, is

negotiating a view off that background. So, this has been the most realistic consultation negotiation with Aboriginal people in our history, about a matter which has great ramifications for them, and for which we all believe there is a foundation for a long-run reconciliation between non-Aboriginal Australians and Aboriginals.

J: ... are you recognising just physical attachment to the land, or also spiritual connection to the land?

PM: Well, you will see that in the draft legislation, in ways in which that can be established, but it is not purely, simply a physical association. Though, that will be the case most of the time.

J: ....States, States who have already expressed a considerable opposition of some of your principles, are you really saying that this draft is merely an ambit claim? How flexible are you on this?

PM: Well, for a start there has been an enormous amount of consultation and negotiation with States at the official's level. Which has gone on now for months. The Bill is, as I say in the press statement, it is not a gerry built proposal designed for a quick fix, that suits a particular interest. We are building here something to last and that's why we have spent so much time on the principles. So, this is not an ambit negotiating document, this is the Commonwealth's considered position. But importantly it gives, in the legislation, a chance for the States to come back with proposals which they may wish to put to us, where they believe, in their terms, better meet our principles and objectives and our Bill. So, while we lay down very clear mechanisms for the meeting of the principles which the Commonwealth has decided, we are also saying to the States, if you think you can do it better in some way by changing or developing your institutions, come back and tell us. But what we are saying here is that on all the key principles which we have articulated in the notes, the mechanisms which we have established around there, be they for hearing and awarding Native Title, be they for considering economic uses for Native Title land, be it exploration, or mining, or pastoral, all those mechanisms we think are sound ones for meeting the objectives of the Commonwealth's principles. And which would apply in the Commonwealth Bill for Commonwealth lands, which would also apply in a State in a non-complying State. But we have got a complying State, not only have they the option to comply with our principles, but they also have a further option in coming back to us and saying in which ways they believe they can better comply.

J: On that basis though, would you believe the States who issued their own draft legislation are more or less with your position, and how far would they have to move if they are not?

PM: Well, the Commonwealth Bill takes precedence and legal precedence, and I think there is, well developing within the States, very much the

view to examine this, to examine this positively. Because this Bill is a balance in crafted proposition, and it does seek that balance, and a nice balance between justice for Aboriginal people and the essential principles of land management for the economy. There is a nice balance there.

J: Prime Minister, West Australia has refused to even accept the High Court judgement, WA has refused at this stage still to accept the High Court judgement. Do you envisage then, that the Commonwealth will have to impose its...?

PM: Western Australia will have a copy of the legislation, they can go through it, but it is in very much of their interest to accept the principles here, because they are ones which don't, in any way, certainly in terms of a claim by a State in any reasonable way, constrain mining or economic activity. Now, if the view is they don't want to give land to black people, well that's a view, of course, we will not accept, and in which case the Commonwealth Bill finally drafted and when it is operating would operate where a State fails to comply.

J: Prime Minister, if this is not the Commonwealths final position, how much room is there? Is there only room for some more input, positive input from the States or is there room from the other interest groups as well to have some ..?

PM: There is room for all the interest groups to say. For instance, we have divided here the task of hearing and awarding Native Title and then considering what economic uses Native Title land can be put. Where formally we were talking about one institution, we are now talking about two. We are talking about a stream of Federal Court to handle the hearing and awarding of Native Title, and then we are talking about an institution, a tribunal which will then look at the economic uses. Now, we have got time limits on negotiation and arbitration, for instance. Now, in the way in which those elements of the Bill are set up, it is quite possible a State or an interest group could come back with a proposition which is helpful to the general design.

J: What about if the Aboriginal people came back, for instance, and said well, we have said we won't accept, that, you know, if you don't give us the right of veto ...?

PM: Well, they are not getting the right of veto, and I have told them that right from the start, because it would bring land management in this country to a halt, it would slow economic activity down, but they wanted a right to be asked, and they have got a right there of consultation. They know if in the result of that consultation their view is not being observed they can go to an arbitration. And if that tribunal arbitrates in their favour, well in their terms, well and good. If it arbitrates against them then they have got to accept that decision. But in the event that a tribunal overturned a proposition for development a

State or Commonwealth Minister can override that decision. So, the practical operation will be, any legislation which has an arbitration procedure automatically turns a consultation into a negotiation. Because everybody knows if you don't negotiate it goes to an arbitration. So, there is an imperative there to negotiate, but in the event that it does go to arbitration a decision can be made and parties will be able to put their view to it. But the body that is arbitrating is not the body hearing the Native Title.

J: Well how vulnerable is your tribunal proposal to constitutional challenge?

PM: Well, I think, invulnerable.

J: You just explained the limitations on compensation, Prime Minister, particularly there doesn't seem to be a specific mention of special attachment in the outline and also how would you see the Bill being spread between the Commonwealth and the State Governments?

PM: Well, we were formally looking at some formulation for compensation, which in some way devolved a freehold value, and with multiples of freehold value for special attachment. But for a number of reasons we think that proposal is flawed and we are now saying that compensation should only be on just terms, and naturally the just terms will comprehend the economic value of any particular piece of and the special attachment which may, and that is the special features of the land, and therefore the nature of the compensation which could be more than monetary compensation can be considered in those terms. On the second part of the question we have not decided what portion of the financial load the Commonwealth has carried in respect of compensation for past grants. But only to say that it will be carried by government.

J: Can I get my question in now - what is the position of National parks, wildlife areas, wilderness areas under this draft legislation? Will they be able to pay more ...

PM: Look, David (Barnett) can I say I don't want to be running down a whole lot of technical features of the Bill. So you can put all those questions this afternoon. The thing I think I would like to hear is the politics, the generic qualities of it, et cetera.

J: Prime Minister, ... developing among the States as to how they look at this, the whole issue of a national approach. Can that be interpreted as you being optimistic that the States will join in with this and if so what States might be still holding out and also what is your response to Mr Perron's letter about changes to the Northern Territory Land Rights Act?

PM: Let me deal with the first part of the question - I think States which look at this issue sensibly understand that a comprehensive national approach is better than a State by State approach. I think the Bill will get a better hearing than maybe people believe at this point from the States. Whether we get agreement is a different matter, but I think it will get a reasonable hearing. I think they are convinced that a genuine attempt on our part is being made to get the balances right here. I am not sure in the end how all States will react, it may be that some want to overturn the High Court decision or take that view. I think it is an unrealistic view. Sorry, your other question was?

J: Mr Perron's letter about possible changes to the Northern Territory.

PM: Well, we have had, routinely, letters from Chief Ministers in the Northern Territory about the NT Land Rights legislation. This is not something the Government wishes to focus on at the moment, this is the primary focus of our consideration - this is this piece of draft legislation. This is the primary piece of Aboriginal law, potential draft law in Australia and easily the best piece of Commonwealth law in respect of Aboriginal land and we want to get these principles drawn together, agreements around this Bill and deal with this Bill.

J: ... two sets of rules, two sets of principles acting at the one time.

PM: Well, one goes to statutorily confirmed land rights and the other goes to inherent rights under the common law.

J: What sort of directions have you taken to match the expectation raised in your Redfern speech in relation to reconciliation and social justice for Aboriginal people?

PM: Following this draft Bill, and then Bill, and passage, will be a package of measures to deal with other social justice questions and these will go to land acquisition and other issues. We are not as developed in that package as we are with this because this is the primary vehicle for giving effect to the High Court decision. But where the High Court decision doesn't have impact on Aboriginal people, that is where they have been dispossessed or not able to take advantage of Mabo then we will then go down the route of trying to see in which ways we can sensibly advance the social justice for those categories of Aboriginal and Islander people. I will probably give some expression to that in the Second Reading Speech on this Bill so that the Aboriginal and Islander community know that in the Autumn session of next year we'll will introduce the other legislation.

J: Prime Minister, how can you avoid delays in exploration and mining activity when under the provisions of this proposal you have outlined today, you only need to register a claim to then be regarded as having an interest in that area such that the Tribunal can direct a company for

example to negotiate with a registered claimant rather than someone who has actually had their native title claim tested.?

PM: So, what is your point?

J: Well, that is going to build in delays because inevitably you will have to end up having to hear the claim to establish a native title hold.

PM: No, no, it would build in no further delay than that which is inherently there in dealing with a native title holder. Aboriginal people are entitled to say, for all these years we have asserted that our traditional customs and land should have been part of the common law of this country. Finally, our most supreme Court has said it is. So we have land which is obviously going to be native title land, but because we have not yet sorted out the ownership of it, the holders of the title, should it be reasonably open for companies or economic developers to then go in just as though no native title ever existed. Native title exists, it exists this very day, it is a matter of deciding who the holder of the title is. Therefore, should it be treated in any less of a way than native title land where the holder is clear.

What we have said is this: the registrar under the Bill, has a set of measures, a set of criteria under which a claim will be registered; vexatious claims are rejected; claims which for instance seek to claim title to areas on which freehold title will have extinguished native title, all those things are taken away, but where there is a reasonable likelihood of a claim be a valid one and one that can proceed, it will be registered. If it is registered - say a mining company will then deal with that registered group of owners and then the same time frame applies - that is, four months for negotiation, three months for an arbitration process if in the event they don't agree, or longer if they both agree. If it is for exploration it is three months for negotiation and two months in the Tribunal. But under any mining legislation now it is three months, for instance, for exploration.

In other words it is (A) a reasonable procedure, and it is a reasonable procedure for native title where the holder is known as it is where a claim has been registered.

J: ... it turns out not the native title holder, if someone had just made a claim, not had it tested and can subsequently be found not to be the native title holder; you built in all that negotiation for months in delay.

PM: Yes, but you are talking about at the most a seven month process. Who now gets an approval process within seven months? Who now?

J: Prime Minister, why have you decided that native title claims won't be heard in the same courts that other Australians use?

PM: That is not necessarily so. The Federal Court is a court other Australians use, a State Supreme Court or a Land and Environment Court for instance are courts other Australians use, except a stream of those facilities will be devoted to the special task of hearing claims for native title, which will mean that anthropological information and tribal information et cetera, custom and tradition - these issues will become the specialisation of whatever will be a variant on these particular Courts whatever they might be. They are very much the same institutions which other Australians use, but varied, changed, adapted for the special task of hearing and awarding native title.

J: Have you got a timetable yet for when this Bill is to be completely finished and introduced into the Parliament? How long is it?

PM: We want it in in October and it is just a matter of whether we can get responses in time to consider the responses, to put them into the draft. We have concurrently been writing a draft Bill as we have been writing drafting instructions so what you see here in the draft legislation also exists as a very rough draft of a Bill. So, that will truncate the time down of actually completing the draft legislation and drafting instructions and then the writing of it.

J: Mr Keating, what impact do you think this proposed legislation is going to have on the Government's fiscal policy over the next couple of years?

PM: Not very much at all.

J: Mr Keating, you have obviously spent an immense amount of time on this yourself, what do you say to those who say that you have been too preoccupied with this issue at the cost of political attention to other areas of government?

PM: I say that is not a correct judgement.

Labor governments are hear to do these things. These are things that will never be done by Tory governments, they will never get the social balances that are in this right. That is why governments like this exist. And I think the work which we have put in here - and it has been an enormous work by my Cabinet and ministerial colleagues and by officers of the various departments - the intensity of the work in six months to try and put together something which has got principles so clearly articulated - first of all decided and articulated as this has, I think will do credit to any piece of legislation of this kind anywhere.

So, you get a choice in these things - either you can do it the way it should be done on an issue which is 200 years old for which we have never adequately tackled, or you can fudge it. What we have decided to do is do it right.



As to political attention, when Budgets go like a charm everyone thinks they are politically tuned and tuned up and polished up and all these things about politics and consultation are never an issue. It is only when something goes awry that you have these problems. Again, one has got to look at the long run. This is five months into a three year political cycle and if this Parliament was worth nothing but to get this right, it would be worth it.

J: Prime Minister, was the Budget going to some extent awry, part of the cost of the pre-occupation of this issue?

PM: The Budget will end up a very good Budget for the nation. That is, that this country alone among few will have a fiscal position which is going to be exemplary by the middle 1990s. There are a lot of you, former incessant barrackers for this position just three or four weeks ago - you have all gone strangely silent. The fiscal industry that exists in this gallery has gone into hibernation, but it is not in hibernation in the Budget figuring - it is there.

As I said yesterday, this notion that we should basically not give an improvement in the tax position of middle income tax payers, this sort of inverse snobbery on the part of people who have never given a hoot for low income earners in the past, is humbug and hypocrisy I will never cop. If the ACTU wants to talk to us about the low paid, fine, because they have always been genuinely interested in it. If they want to put a view about middle incomes I will take it. But I will never take it from people who have never had a interest ever, who wanted to cut Commonwealth outlays back at every opportunity and then are already now discovering as a way of criticising the Budget this question about the low paid. Anyway, as I indicated yesterday in the House those huge real increases for people up to around three quarters of average weekly earnings attest to the fact that the Government looked after these people first.

Let me say this - the Government is taking no humbug or lectures from anybody about looking after those on low incomes. We have done more than any Commonwealth government ever, but nor are we going to say that somebody on average weekly earnings, at \$33,000 or \$36,000, is a wealthy person and doesn't deserve to be considered in the sweep of incomes which all governments have to consider. The Liberal Party has taken the Bill we have introduced and challenged it, or are seeking to challenge it. They want to cut away at the Budget's capacity to pay tax cuts to middle income earners. The Liberal Party of Australia is hoping in to middle people on middle incomes, the people on \$33-36,000. The hypocrisy is profound.

J: As leader of the Labor Party, what message did you take away from the Caucus Economics Committee meeting of the other night?

PM: The first I'd take away if I was you is don't believe all that is told to you. Because much of what I saw printed the next day was never said. No, it was a reasonably, I thought, good meeting and I went there because I could not attend the Caucus the following day, I had to speak to the ACTU and I was not going to leave the Treasurer alone in a Caucus meeting just to argue the point himself. So, I took the opportunity to go to the Economic Committee meeting and there most people put a very reasonable view. Those who had sharp comments either wanted to be in the Ministry and missed out or had been in the Ministry and had been dropped out and had an axe to grind. That is all right, we all know about them, they are wounded soldiers, but we will try and bind them up and make them happy.

ends