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PRIME MINISTER

**TRANSCRIPT OF THE PRIME MINISTER, THE HON P J KEATING, MP
PRESS CONFERENCE, PARLIAMENT HOUSE, 14 OCTOBER 1993**

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This morning I met with Aboriginal leaders and outlined the Government's position on the core principles which are informing the Government's proposed legislation on Mabo and its response to the High Court decision.

Over the past few days I have also discussed in general terms the Government's approach with other major groups, including mining interests and the States. And as a consequence I will be taking the proposals to Cabinet on Monday. The central requirement in this is as always, as it has always been, and that is to find a balance, not a compromise of the spirit and substance of the High Court judgement, which was to recognise Native Title and address the historic and continuing injustice experienced by Aboriginal Australians, yet equally not a compromise which ignores contemporary realities and the rights, interest and attachment to this land shared by all Australians.

We need legislation which strikes a balance, which takes account of Australia's past and Australia's potential. When the Commonwealth Government entered the Mabo discussions it was with a conviction that the vast majority of Australians want a country which is both prosperous and just. A year later I am all the more convinced and I am confident that we are about to deliver legislation consistent with that ambition.

The principles I will be taking to the Cabinet on Monday will largely mirror the detailed outline the Government made available on 2 September. Following Cabinet the drafting of the Bill will then proceed. I am not in a position to provide details now, but on the key issues let me say this, the processes of the Bill will be consistent with the Racial Discrimination Act, existing grants of interest will be validated and be secure, and the States and Territories will continue to have the capacity to manage the land if they meet the standards of the Commonwealth Bill. In other words, not only a just outcome for Aboriginal interests, but one which recognises the role of the States in land management and economic certainty. All major interest groups in the course of these discussions made concessions, all have ultimately recognised the great significance of the issues involved and that they demand a national response. We are looking for solutions to the problems which have beset them for 200 years, that is the Aboriginal people of this country, and continue

to beset them. No legislation will alone be the solution, nor will any one interest be completely happy. This of course, none of us believed was ever possible. But the proposed legislation will lay the basis for solutions to be developed and above all for creating the essential environment of cooperation and good will on which progress towards all our goals will ultimately depend.

I am happy to take questions from you.

J: Prime Minister, to what extent will Native Title be extinguished under this new arrangement?

PM: No more or less extent than under the outline of the Bill.

J: of where all titles, except mining titles, would have extinguished Native Title, will that situation prevail?

PM: You will have to wait until you see the outline again. But the thing is no more or less than was outlined in the outline.

J: Prime Minister, how would you characterise your discussions with the Aborigines today?

PM: Well I thought they were very fruitful, that is fruitful in terms of the attitude of the Aboriginal representatives to the points, they had sent me a collation of their points of agreement or disagreement on some of the measures. I had been over those in the last couple of days and was able to then handle those points off one at a time through a fairly substantial checklist. Now, we are going back tomorrow to have a further discussion, tomorrow morning some time I think, just to finalise some of the points we really didn't have time to finalise today.

J: the situation on Friday, and the situation now?

PM: Well in terms of the substance I think the Racial Discrimination Act, that is the Government's clarity about the fact that we can have, if you like, even greater certainty of titles down the route we are heading, while embracing the Racial Discrimination Act rather than overriding it, that is the key point. The other points of substance, there are other points of substance, one is that we are going to give them the right to select jurisdictions between the Federal Court and the State Courts for the hearing of Native Title, but not for the economic use of Native Title land, that will remain exclusively with the States. And beyond that there are changes, but the general thrust of the Bill is as of last week, beyond those couple of core issues. Now, it depends what you call core, obviously Aboriginal people might have a different view of some of these points, but I think what I call core issues they are probably two of the three or four main points, and there are other points. But there is a very clear intention on the part of the Government in the Bill that questions of economic land use and the efficiency of decision making

in this area be that which is left to the primacy of the States as they are now, as it is now with land management. But Aboriginal people want protections in respect of Native Title and the preservation of Native Title and they don't want to see any opportunities for any State to override Native Title and hence their concern about the Racial Discrimination Act, a concern which we have met.

J: (inaudible)

PM: No, only cooperating States. So, if a State doesn't establish the mechanisms in this Bill and reflect that in the State, then the designated tribunals to operate in a non-cooperating State will be exclusively the Commonwealth Tribunals for the land, that is for Native Title and land use. But if a State is a complying State and they fashion their processes instrumentalities, their tribunals in accordance with the law as drafted in this Bill, well then they will have the prerogative over land management. Now, Western Australia, in my view, would be advised to become a cooperating State, in which case their tribunals will determine the economic use questions, but only in terms of the outline laid down in this Commonwealth Bill.

J: Mr Keating, explain how you have been able to reach the Aboriginal negotiators, that you can deal with their concerns about the RDA. How have you been able to give greater certainty to title without overriding the RDA?

PM: Well that's our advice, that the title is entirely certain under the methodology which the Government has now proposed. What the Racial Discrimination Act is, is an act against discrimination against peoples of a class or race. But it has a provision in it where one can discriminate in favour of peoples in a class or race so as to bring them up to a level of equality of opportunity with the rest of the population or community. These are called the special measure provisions. Now, I told the Cabinet two weeks ago that we were in the course of examining the special measure provisions and we have been, but of course we are also in discussion at the same time with the States trying to agree words on the Racial Discrimination Act. Now, we came to the view late last week that the words the States wished us to agree were too broad, that they not only would have permitted the validation of past grants but may also have opened up the option of States being able to do things prospectively without the sanction of the Racial Discrimination Act. Now, as a consequence of that it was a matter of us deciding how we could embrace the RDA, how we could embrace it, and at the same time validate. No doubt you will have heard some views about advices and things about the special measures and how they might work. Well they are not the special measures and the approach is not, as many people have spoken about it, it is the special measure provisions of the Racial Discrimination Act but cast in a different way, but in a way which would work.

J: ... (inaudible)

PM: Look, Tom (Burton) I don't want to go through the whole Bill. Look, I don't want to obfuscate about it, but I am not here either to be shadowing the Parliamentary draftsman. There has to be a group of measures which are in fact special in their variety which undoubtedly taken as a group advance the interest of persons within a class or race.

J: Can you describe some of them?

PM: Well I can. They are basically ... the access to tribunals to hear and award native title and by the facilitation of that process, the non-extinguishment of native title, the extinguishment of native title which would otherwise go on with land grants in the interim. In other words, if these matters were heard in the courts then States would just go on routinely issuing grants of interests over native title and extinguishing hand over fist.

So the tribunals, the choice of jurisdictions between the Federal court and the State Supreme court streams for the hearing of native title; the right to negotiate over land; that is a real right of negotiation followed by a tribunal arbitral process which the Bill provides; the condition of just terms for extinguishment of native title, that is a Commonwealth Constitutional requirement which we will require the States to meet, even though they are not required to meet it; protections beyond the common law; the designation and funding of particular Aboriginal organisations which have been the empowerment through which the empowerment of Aboriginal people has generally come and a package of measures which also deal with extending opportunity to those Aboriginal people unable or unlikely to be advantaged by the Mabo decision as a result of their dispossession. I am talking of such things as a major land fund which would go on to a revolving fund which would go on buying land for time in memoriam.

All of those things amount to and can I say many other elements to that, but I mean this is in the broad, all of these things amount to a series of special measures which are no doubt there for the advancement of Aboriginal people.

J: When you talk about the rights to negotiate in relation to land under those special measures, are you talking about negotiating over land on which there are other grants already issued and are you going to allow at the end of it that that's the retrospective procedure of fairness?

PM: Look, I'm not into

J: You said on Friday ...

- PM: I know what I said to you and you asked me a whole lot of legal questions at the last press conference.
- J: But, you said on Friday that there would be ...
- PM: I am not going to oblige you now any more than I was then.
- J: Prime Minister, ... does this mean that native title will coexist with all other forms of title except freehold title - that is, not be extinguished?
- PM: You will have to wait until you see the Bill again, but the general thread of the legislation as you saw it in the presentation, this is the point I make to you and the presentation will still be there.
- J: Prime Minister, do you stand by your statement of 17 June, where you said "where freehold or leasehold has been dispensed in the past the High Court has held that the native title has been extinguished". Do you stand by that statement now?
- PM: No, what do you mean stand by the statement?
- J: Well, you made the statement.
- PM: It is not a statement, it is a description of what the High Court said.
- J: Do you still agree with that description, you gave it?
- PM: That is the extremity of the High Court's power. The High Court's judgement said to take these principles to their logical end point, a valid grant of these varieties extinguishes native title. But we are saying in our Bill, we give the Aboriginal people if you like, a legislative advantage over that - over the common law position by protecting native title where it would otherwise be extinguished.
- J: So it is not going to be extinguished?
- PM: Again, Peter (Gill) please don't try on me tricky questions and tricky points. Please. Do me at least the favour of understanding exactly ... me understanding exactly what you are about
- J: ... (inaudible)
- PM: Please don't be ... any certainty will come with the Bill not with your column, dear fellow. Now, I know you are all entitled to have a big head about your columns but, the fact is and no doubt you are well read. But, you may not be as well informed as you are well read. Let me just make this point to you. The High Court has said in its decision that the valid issue of a grant of interest in land over freehold or leasehold title can extinguish native title. The question is, should it extinguish native title? Do you understand? That is point I made.

Should it extinguish native title? And we are saying in some cases, yes, and in some cases, no. And that is in the outline on 2 September.

J: ... (inaudible) on Friday you talked about setting up a system of tribunals around the country to determine these issues.

PM: Sorry Amanda (Buckley) I wasn't quite with you.

J: I was just trying to work out what part these tribunals you mentioned just before in your list of points, what part they play?

PM: Let me explain to you. The Aboriginal community can trot along to the High Court and mount land claims. Now, this will be a cumbersome, time consuming process and while it is happening States will be issuing land grants and extinguishing native title. So we want a process which is fair, expeditious, and where there is certainty. So we will set up a tribunal to hear and award native title. That will be a branch of the courts of the States - the Supreme Courts most likely - or the Federal Court of Australia. This will obviate the need to trot land claims along to the High Court or to the Federal Court.

J: So you are calling these tribunals, but they are in fact of the court system?

PM: They are courts. But then parallel to that there is a tribunal. This was all revealed in the outline of 2 September. What the tribunal says, the tribunals are there for having had native title awarded and someone wants an economic use over it, be it mining or pasture or tourism or what have you, those tribunals then will sit in an arbitral judgement upon them in the event that the proponent of the economic use doesn't get to a point of agreement with the native title holder. So, there is a process of notification; a process of consultation; a process of negotiation; and in the event that fails a process of arbitration. That will happen in the economic use tribunals which will be set up only in the states - not in the Commonwealth jurisdiction. But there will be a Commonwealth tribunal for Commonwealth lands - that is the ACT and Jervis Bay etc. But that same tribunal will apply in a State that doesn't comply.

J: ... Western Australia.

PM: Well, any State.

J: Prime Minister, what is going to be the cut off date for validating leases?

PM: That is a matter for negotiation. It is more likely to be the end of the year, end of this year.

J: Prime Minister, are you telling us that you are finally arrived at a position that you believe settles, as far as possible, the concerns of the Aborigines and your concerns - the concerns of the Commonwealth Government?

PM: What I have done here today is to meet the Aboriginal people, to take on board their comments on the draft and their points of objection to see whether we could meet them and where we could meet them, say so, where not say so, say why and indicate to them that we will be presenting a Bill that has the following features outlined to them - saying we hope you can support this Bill. We believe that this Bill covers off the twin objectives of equity and justice for Aboriginal people and provides a workable system of land management for the economy and society. That draft outline which I will now take to Cabinet, Cabinet will consider and when Cabinet has completed its consideration, we'll then go to drafting. We will then introduce it.

J: Are you confident the Aborigines ...

PM: I am confident that the Bill is everything I say it is and that it can pass through both Houses of this Parliament.

J: Do you think you might introduce the Bill this week in Parliament, next week in Parliament?

PM: No, the Bill is weeks and weeks away. The Bill is weeks away, the drafting of it ... it is a huge, mammoth drafting. This is a major piece of law, this is a major drafting task and because even if one changes some of these ... obviously for some of the sections they will remain largely unchanged and drafted as of now. But because many of things are changing and will have then consequential impacts upon other sections of the Bill it really requires each time you change this Bill in anything other than a marginal way, it means that the whole outline is essentially re-drafted.

J: Where are the States now in terms of the changes that you have made to this legislation?

PM: I have spoken to State Premiers over the last couple of days and last week about this. I think they want in the end to be able to sensibly manage land. I think they want a national system and when we get down to a finer drafting and they can see that draft I think they will be convinced of the fact that this is a fair and decent piece of law from which ever direction it is viewed. This may not be the view of some States who have now not been in the process of negotiations to date, but that I hope, is where they will end up.

J: Prime Minister, in the broad can you just tell us what form of entitlement will and won't be extinguished by native title?

PM: I'd just send you back to the outline Glenn (Milne). I told you before and you will have to wait to see in which way the outline has changed. But by and large it will be pretty much as the outline.

J: So Prime Minister, this is the Government's final word on this package that you taking to Cabinet on Monday, there is no hope for any of the ...

PM: Once it goes through the Cabinet it will be into drafting.

J: Would it be right to say that up until last week you thought you would get the Federal Opposition on side eventually and then realising that they weren't going to come on side you made these changes?

PM: I think Mr Reith's appointment was there to spike the passage of the Bill. And he has made that pretty clear hasn't he.

J: So that is the reason for the change is it?

PM: No, the fact is we have the amenity within the Commonwealth Parliament in terms of its Constitutional power to establish all of these procedures. We want to do this co-operatively with the States, we need them to make land management work. But we also need their support for it I think. We would like their support for it. That didn't shift the West Australian Premier's position I might add and it hasn't shifted the Federal Opposition's position as far as I understand.

J: Would you recall Parliament if necessary to ensure the legislation is passed?

PM: I don't think there is any need to.

J: In your advice, is there any question that the Commonwealth's constitutional powers to deal with laws affecting race override the States constitutional powers on land management?

PM: I am not here to be giving you legal opinions, but we have a clear power under the race power of 1967 and we have also powers in relation to the external affairs and the convention. The Commonwealth has got adequate constitutional power here.

J: You don't think this could be challenged?

PM: That's up to you - you ring around the Premiers and their advisers and see what they say.