



PRIME MINISTER

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

COMMONWEALTH RESPONSE TO HIGH COURT MABO JUDGMENT

The Cabinet tonight finalised the Commonwealth Government's response to the High Court's decision on Native Title.

The decision is the culmination of a lengthy process of discussion and negotiation with a wide range of interests including Aboriginal and Torres Strait Islander people, States and Territories, mining, pastoral and other industry groups.

The Government's aim has been twofold: to preserve the integrity and certainty of Australia's land management system and so ensure continuing economic development; and to provide a measure of justice for Aboriginal and Torres Strait Islander people.

As Mabo was an historic judgment this is historic legislation, recognising in law the fiction of terra nullius and the fact of native title. With that alone the foundation of reconciliation is laid - because after 200 years, we will at last be building on the truth.

In striving to meet these twin goals we have progressed from a series of questions and uncertainties to a detailed blueprint for Commonwealth legislation.

The key points decided by Cabinet are:

- . the Commonwealth legislation will give full effect to the High Court decision without affecting the existing rights of any property holder.
- . the legislation, taken as a whole, will constitute a special measure for the protection and advancement of Aboriginal and Torres Strait Islander people under section 8 of the Racial Discrimination Act.
- . Aboriginal and Torres Strait Islander people will be able to choose the Federal Court or a recognised State body (such as a State Supreme Court) to pursue a claim for native title.

States which comply with the spirit and principles of the Commonwealth legislation will retain their traditional and paramount role in determining the economic use of land within their borders.

The legislation will also:

- allow States to validate grants affected by the existence of native title on a basis that provides certainty and accords with the RDA and Australia's international obligations.
 - extend the cut-off date for validation of past grants to 31 December 1993, thus providing ample notice of the new rules which will apply in future.
 - allow States to propose State or Territory tribunals or courts for the determination of native title claims.
 - accept that normal State/Territory regimes should determine compensation for the impairment of native title. This generally relates to the surface disturbance caused by mining, and is paid by the mining company - as is the normal procedure. "Just terms" will govern compensation for extinguishment.
- there will be further discussions with States and Territories on cost-sharing arrangements between the Commonwealth and complying States.
- the Bill will not jeopardise Australians' right to enjoy beaches and other recreation areas, including national parks.
- industry will be a major beneficiary of the legislation which will provide:
- validation of existing grants, with governments to pick up any compensation costs. There will be no qualification whatsoever on the rights of the grant-holder, which have primacy over the native title and will indeed, in some cases, extinguish it.
 - a clear, timely process for determining native title - funded by the government.
 - native title holders will not have a veto on development, which could lock up native title land, but will have a right to negotiation.
 - protection against the 'double jeopardy' of consideration of exploration and, later, mining grants.

so far as it affects pastoral leases at all the proposed legislation will only affect invalid leases.

- there are a few pastoral leases which have been issued since 1975 which could conceivably be invalid because the requirements of the RDA were not met when the leases were issued.
- there may also be leases issued before 1975 which are invalid on grounds unconnected with the RDA but connected to some other rights, as yet unidentified in law, flowing from the existence of native title.

The Commonwealth has been advised that the chances of such rights existing and leading to the invalidity of leases is small, but the possibility remains. To remove this uncertainty, the Cabinet has decided that the Bill will provide that any leases which might be found to be invalid in any circumstances connected with native title can be validated by the Government that issued them.

In other words, these leases will be made totally valid and all rights connected with them will be totally valid and will always take precedence over native title.

the validation of pastoral leases will extinguish native title, as provided for in the September 2 outline, however;

- where Aboriginal people who own or acquire a pastoral lease, and who the tribunal determines would satisfy the criteria for native title, but for the existence of the pastoral lease, wish to convert their holding to the equivalent of native title, they may do so.

the tribunal will decide what native title rights are in the particular case.

the owners would get the native title benefits and protections under the Commonwealth Bill.

- the Commonwealth Government would press for the development of Codes of Conduct where there are reservation rights, recognising though that, in the final analysis, this depends on the willingness of the pastoralists, Aboriginal people and probably the States to come together.

the Bill will enhance the right of native title holders to negotiate on proposed actions which affect their land:

- time limits for negotiation and arbitration will be extended beyond those proposed in the September 2 outline. Four months will be allowed for negotiation and another four for arbitration in the case of exploration licences, and six months for both in relation to mining leases.
- before a government compulsorily acquires any native title land to grant to a third party, negotiations must take place.

there will be greater recognition given to the potential value of regional and local negotiation so that nothing in the Bill prevents agreements or settlements at a regional or local level between governments, Aboriginal people and others with interests.

while details will await further legislation next year, the Bill will make provision for a land acquisition fund to address the land needs of those Aboriginal and Torres Strait Islander people whose dispossession from their land means they will be unlikely to benefit from the Mabo decision.

CANBERRA

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