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# PRIME MINISTER

## WIK JUDGMENT

I am disappointed that yesterday's High Court decision in the Wik case failed to clarify satisfactorily uncertainties concerning the effect of native title on pastoral leases.

The decision appears to have overturned one of the fundamental principles on which the community's understanding of native title had proceeded.

While all pastoral leases granted prior to 1994 remain valid, and their provisions prevail over conflicting native title interests, the nature and extent of co-existence effectively depends on the inconsistency between rights conferred on the pastoralist by the relevant legislation and by the lease itself, on the one hand, and the native title rights and interests on the other hand.

The stated assumption of the previous government in framing the Native Title Act was that pastoral leases extinguished native title because they conferred exclusive possession. Pastoralists could not therefore be affected by native title claims, and mining development on such leases would be unaffected.

This was also the basis of the argument put by the Commonwealth to the High Court in the Wik case.

Also, the Coalition's policy on native title, put at the last election, was influenced in part by those same assumptions and beliefs.

Yesterday's decision reversed those assumptions. In the process, it raised both ambiguities and questions which must be addresssed and resolved.

In his second reading speech of 16 November 1993, the then Prime Minister emphasised that 'pastoral or agricultural leases ... will extinguish native title". Notwithstanding such promises made to them by the previous government, numerous pastoralists have since found themselves as respondents to native title claims and parties to native title mediations. Mining development over land covered by pastoral leases has also been delayed by the unintended need to go through the right to negotiate processes of the Native Title Act.

The judgment therefore has obvious ramifications for the Native Title Act as currently framed. It raises questions well beyond those which the government's current amendments were proposed to address. Those amendments, due to be debated in the Autumn sittings, continue to have great merit. They have stand alone value.

The government will urgently consult State and Territory governments and other interested parties about whether the Native Title Act needs to be further amended in light of yesterday's judgment.

It is essential from all perspectives that there exists public confidence in the processes of the Native Title Act for managing the interface between the common law of native title and the existing land tenure system in Australia.

I hope that all parties, both government and non-government, will reflect carefully on the implications of the judgment and possible policy responses.

24 December, 1996