

**MABO - AN ADDRESS TO THE NATION**  
**BY THE PRIME MINISTER, THE HON P J KEATING, MP**  
**Canberra**  
**15 November 1993**

When the High Court of Australia handed down the Mabo judgement last year, it set our generation of Australians a great challenge.

The Court's decision was unquestionably just.

It rejected a lie and acknowledged a truth.

The lie was *terra nullius* - the convenient fiction that Australia had been a land of no one.

The truth was native title - the fact that the land had once belonged to Aboriginal and Torres Strait Islander Australians and that in some places a legal right to it had survived the 200 years of European settlement.

So here was an issue the country could not ignore - either legally, or morally.

There was another form of title that had to become part of the way we manage land in Australia.

We owe it to Aboriginal Australians, to all Australians, we owe it to our fair and democratic traditions and to future generations of Australians - to recognise this native title.

Tonight we are within reach of an enlightened, practical response to Mabo. This week I will be proposing legislation to Parliament which meets both the spirit of the High Court's decision and Australia's responsibilities and needs.

The Bill will necessarily be complex, but this evening I want to cut through the complexity to some of its simple principles.

First we need to get the background straight.

Over tens of thousands of years Aboriginal people had developed a complex culture built on a profound attachment to the land.

The land nourished them spiritually as well as materially. In the landscape and the life upon it they saw evidence of the epoch of creation. Down through the generations they passed on laws, customs, traditions and ceremonies reflecting an obligation to care for the land which went to the heart of their society.

Yet this most remarkable fact about Australia - this oldest continuous civilisation on earth - has until now been denied by Australian law.

The first European settlers declared that the land had belonged to no-one and the indigenous Australians were shunted aside, often with appalling brutality.

Much of the despair and degradation, conflict and disease, and many of the problems which Aboriginal Australians face today are a consequence of this dispossession.

We have no need - nor any use - for guilt. This generation cannot be held responsible for the cruelty of previous generations.

But to ignore Mabo would be the final cruelty, and we would be held responsible - by the world and by future generations of Australians.

And they would be right to hold us responsible.

There is much in Australian history of which we can be tremendously proud - for here in Australia we have created a modern, tolerant, free, prosperous and democratic society.

But we must understand that Australia's success has had a price - and surely the highest price has been paid by Aboriginal and Torres Strait Islander Australians. They often paid with their lives; with their rights, their dignity and happiness; with their land.

When the connection to the land was broken their society and economy was devastated.

But the connection was not broken everywhere - and it is a testament to the tenacity and resilience of Aboriginal Australians that so much of the culture - so much of the Aboriginal story - has been passed on through generations down to this day.

In 1982, Eddie Mabo and four others began action seeking a legal declaration of their traditional land rights in the Murray islands of the Torres Strait.

Ten years later on 3 June 1992, the High Court decided that his people were entitled as against the whole of the world to possession - and I emphasise "possession" - occupation, use and enjoyment of these lands.

Thus the High Court of Australia recognised native title - and Aboriginal custom and tradition as a source of Australian common law.

The Court accepted that native title existed where two fundamental conditions were met:

that their connection with the land had been maintained, unbroken down through the years

and that this title had not been overturned by any action of a government to use the land or to give it to somebody else.

It is probably only where there is so-called vacant Crown Land, and in remote areas where traditional Aboriginal life has not been disrupted, that native title exists.

Nevertheless, the High Court's decision posed many questions.

Who holds native title over the land, and where?

What rights does native title give to Aboriginal people to control access to the land, and the use of it?

What rules should govern dealings in native title land, and how can our vital land-based industries get on with the business of developing our natural resources.

From the outset the Government recognised that these uncertainties needed to be faced: the Court had made its decision but there was not the body of administration and law to give effect to it.

From late last year the Government has been developing a framework for such a law and discussing the principles on which it would be based - the first of these principles being justice for indigenous Australians.

What sort of country would we be - how could we claim respect for the law - if, after the highest court in the land has recognised native title, we deny it?

How could we say that we stand for a fair go if we were to wipe away a title to land which has lasted through thousands of years of occupation of the continent and 200 years of European settlement? How could we explain it to Aboriginal Australians? How could we explain it to the world?

To deny the High Court decision, to deny native title in Australian common law would deny justice: for it would deny indigenous Australians rights to land enjoyed by other Australians.

And the result could only be antagonism - courtroom battles and uncertainty in the community and in industry.

There is no decent or practical option but to recognise the High Court decision and make it work.

Which brings me to the second of our objectives.

We must maintain a system of land management in Australia which provides clear and predictable rules; security and certainty for people who hold land; and a capacity for dealings in land to proceed effectively.

So it must be an efficient system of land management, but it must also be fair.

The legislation which we will introduce this week will accomplish these objectives.

It will enable us to determine who has native title, where, and the rights involved.

It will give Aboriginal people holding native title the right to negotiate about actions affecting their land - a right, but not a veto.

It will permit governments to step in and decide, in the final analysis, whether an important economic project should proceed.

It will have the Commonwealth Government play its proper role in setting clear rules and standards for dealings which affect native title, but leave land management to State and Territory governments if they accept the national standards.

It will set up a system of courts and tribunals, in effect as an umpire on matters of native title.

It will, to the extent practicable, preserve native title from extinguishment, and where it is extinguished, ensure just compensation, and...

It will provide security, so that no one who owns a home, a farm, a mine, a tourist operation - no one - need have concern about their tenure.

No one group will get all they want from this legislation - not Aboriginal people, not industry, not governments.

But the national interest will be served, and only the Commonwealth legislation is capable of serving it.

As you know, at the moment Western Australia disagrees with the Commonwealth approach and is trying to "go it alone."

Going it alone is not the answer. Ultimately, the Commonwealth law will prevail over the Western Australian legislation and in the meantime uncertainty will only continue.

There is only one way to provide certainty - and that is with a single, uniform, national approach, a fair and predictable set of rules which everyone can work with.

This is not just my view, it is the view of seven out of our eight States and Territories, all of whom believe this legislation can work.

With the challenge of Mabo effectively met - with native title efficiently brought within our land management system, we can move on.

We can move on to see Mabo as a tremendous opportunity it is.

An opportunity to right an historic wrong.

An opportunity to transcend the history of dispossession.

An opportunity to restore the age-old link between Aboriginal land and culture.

An opportunity to heal a source of bitterness.

An opportunity to recognise Aboriginal culture as a defining element of our nationhood and culture - and to make clear that this Australia, this modern, free and tolerant Australia can be a secure and bountiful place for all - including the first Australians.