CLAYTON UTZ WIK CONFERENCE

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Let me first pay my respects to some elders. I think it was Galarrwuy Yunupingu who said yesterday at a meeting that one of the realities which the people of Australia dealing with native title and indigenous rights generally will soon have to appreciate is that in his view it is difficult to find any Aboriginal person in this country who does not possess law and culture and custom. Aboriginal law and custom exists right across the continent, and indeed in the shadows of this very metropolis there exist surviving Aboriginal people with traditional connections with this country.

I know how much of a disturbing proposition that is to many white Australians, but I tend to favour the view of Galarrwuy Yunupingu that that reality is something which Australians will inevitably have to come to terms with. Aboriginal people and their rights are not just remote realities; they exist here, right in the shadows of great wealth, accumulated right and entitlement. In these very shadows remain people who have a legitimate and moral expectation that something should be left for them as well.

So let me pay tribute to the elders from the Aboriginal community in the south-east corner of this state who still wait for some place to be carved out for them in an Australia that compels black and white people to a common future, living on the same land. Let me also pay tribute to a white elder here today, John Greenwood of Queen's Counsel, counsel for the Thayorre people in the Wik people's case. For those who don't know John, he is a former Minister for Surveys and Valuations in the state of Queensland, and it was his enthusiasm about the prospects of native title coexisting with pastoral leases that I suppose lifted my doubts about the impossibility of the Wik people's proposition to the High Court of Australia.

John's very extensive experience with land title management in the state of Queensland and his comprehensive knowledge of the land legislation left me feeling that perhaps we were in there with an argument, and I recall one weekend David Byrne, myself, John Greenwood and his instructing solicitor feverishly working away in offices in Cairns because they had discovered a long-lost lease under the country of the Thayorre people called the Mitchelton lease, and for those who have read the High Court's judgment in the Wik the Mitchelton lease or leases were leases that were granted by a paper event here in Brisbane but those leases were never taken up, and the 300 or so natives as they were described who roamed over their traditional lands were never notified of the issue of the lease and were never disturbed in their traditional connection and occupation of the country.

The Mitchelton lease just happened through just - it must have been a matter of a few kilometres or maybe even in some places a few hundred metres, the Mitchelton lease encroached upon the claim then before the Federal Court of the Wik people's, and it afforded us with the opportunity to join the Thayorre people in that action to claim their traditional connections to lands that were the subject of this leasehold that the crown was urging was a sufficient event to extinguish the

traditional rights of the Thayorre people who had never been disturbed to this day in their traditional occupation of their country.

It enabled us to go to court to urge the injustice of a native title law that would deprive people of their traditional entitlement, even though they had been never disturbed in their traditional ownership, and I have to say I held doubts similar to Peter Gore in relation to the prospect of the High Court finding in favour of coexistence. I don't think the same doubt was entertained by John Greenwood QC, and I'm obviously today very pleased to have been in the wrong.

I also want to make some comments about Rick Farley's presentation. For those who are concerned about how this country might properly deal with these real implications of Wik, I would suggest a careful read of Rick Farley's paper here today affords the kind of balance and hard-headed pragmatism that this country will have to muster if we want to deal with this issue properly.

Finally I just want to make a comment before I start about - this whole debate is really about, "Are you safe?" That's what the debate has kind of ground down to: the question of, "Are white people in this country safe?" You know, those who are safe, if that is the way in which we're going to look at this business, those who are safe are those people who can enjoy the privilege that accrues to them by virtue of the fact that either they have accumulated an exclusive right to country by virtue of freehold grants or by virtue of leaseholds that grant exclusive possession, or you may be safe if you have a lesser interest in the land, a non-exclusive possession, but you hope and pray that the traditional owners of that country have been murdered, dispossessed and are no longer alive to claim their rights in the present.

You are safe if history has granted you the serenity of total Aboriginal annihilation, and there may well be places in this country - I don't know. There may well be places in this country where absolute security accrues to you by virtue of Aboriginal genocide. The disappearance of the Aboriginal people can make you feel absolutely secure in your proprietorial accumulation of right.

It seems to me that states and non-Aboriginal people generally following the Mabo decision have been clinging on to the hope, have been clinging on to the hope that hopefully the indigenous peoples have lost their traditional connection to the country; hopefully they have disappeared because that will provide us the requisite certainty and the requisite individual control of land. It's a bizarre proposition that we should be celebrating certainty based on the hope of Aboriginal dispossession. Anyway, I don't think we as a country have had much opportunity in these debates to ponder these foundations of where we're coming from in the political debate.

At common law I think that the concept of native title is obviously something that we are still going to grapple with, and we are not going to provide the kind of easy and simplistic certainty that is being sought by industry, by the submissions of the farmers and political parties and regional governments, because we are still going to have fundamental disagreements about what the concept of native title really is, and the High Court is yet, I think, to properly grapple with a definition of the concept of native title.

We all still, on the basis of the High Court's decisions to date, and even on the basis of jurisprudence from North America that have long considered these questions of native title, we

still I don't think have a consensus about what native title really is. My own view - and the view is not absolutely supported by comments of the various judges in the Wik decision - is that native title in order to be properly understood must be understood as a recognition concept. That is the meaning of the judges when they say that, "Native title is not a common law title. It is a title recognised by the common law."

So native title exists as a reality. Aboriginal title to land exists as a reality separate from the imported system of law in Australia. That Aboriginal law and the reality of that Aboriginal law still exists, even though the common law may refuse its recognition in certain circumstances. That seems to me to be a question of reality, of social reality; that the grant of a freehold that the common law says effects an extinguishment of native title does not in reality extinguish the traditional laws apportioning entitlement to Aboriginal people.

So properly understood, very simply, native title is a recognition concept. It is one legal system in certain defined circumstances established by that system, recognising entitlement under another traditional system of law. If that be the case, and it seems to me the simplicity of the logic is compelling, then extinguishment must be understood as extinguishment of recognition. There's no extinguishment of Aboriginal title because it exists as a matter of social reality; same as it always existed in the minds of the Thayorre people since the original Mitchelton leases were granted.

It always was understood by the Thayorre people that that was their country, and there was a living law operating in relation to that country. So extinguishment properly comprehended under the common law must be understood to be extinguishment of recognition by the common law, and this understanding seems to me to answer Justice French's problem in the Waanyi case when he grappled with the moral shortcomings of common law notions of extinguishment and recognition of native title.

The notion of extinguishment of recognition provides us with a model to understand and to develop a common law on native title that properly respects the social realities, whilst at the same time enabling the common law to determine those circumstances where the traditional title should be recognised. Now, it seemed to me the test was basically struck correctly in Mabo when Justice Brennan said that recognition might occur where the exercise of native title rights is not inconsistent with any crown grant or any legislative dealing with the land.

This notion of inconsistency seems to me to be a fair way of working out where recognition might take place and where recognition might not. So the question of revival of native title at the end of the day is something that seems to me to be a logical consequence of understanding native title as a recognition concept because if the inconsistency is lifted and the Aboriginal title is able to be exercised, which title has not disappeared as a matter of social reality, if the inconsistency is lifted, why could we not have a common law that afforded the rerecognition of the native title?

We're still preserving the basic compromise in Mabo, that if there is an inconsistency then the native title must yield, but why could we not comprehend a system that allowed for the native title to be fully recognised in the event of the lifting of the inconsistency? These are questions that we're going to have more arguments about in front of the High Court of Australia, no doubt, and I don't think that we're going to get into furore with government and industry that's going to produce a consensus around my model.

So it seems to me that there are these common law questions that are pretty fundamental that must remain for another day to be properly understood. There's also the question of the content of native title. What is native title as a matter of dimension and content? The High Court decisions to date give us very clear guidance that the content is to be determined by reference to the traditional laws and customs of the particular group claiming native title, and I've been urging that that assertion by the court is only correct for the purposes of determining the rights of native title holders as between themselves.

But native title must, it seems to me, have a dimension that the common law can comprehend in pretty simple terms. Yes, the laws and customs of particular groups right across the planet do provide for a peculiar allocation of rights between the communal titleholders, but there must be no group on the face of the planet asserting dominion over land that have in dimension terms any lesser concept of ownership of country and entitlement to country under their laws that is lesser than the claim of other groups.

Indian title must be the same as Chinese title, must be the same as New Guinean title, must be the same as Wik title in terms of dimension. What human group does not in the same way as the Englishmen assert a dominion over land that comprehends title from the centre of the earth to the skies? What human group does not possess that uniform concept of ownership? It would be discriminatory for the common law to maintain that native title is somehow a lesser concept than the concept of ownership embraced and understood by any other human group.

Now, in our case here in Australia in relation to native title, and indeed in relation to the Englishmen's title, our title may well be qualified by actions of the legislature which have taken rights away lawfully. So native title must be understood as a full ownership that has been derogated from by valid act of the crown. So the exercise in determining the content of native title in my view is an exercise in identifying those valid acts of the crown and the legislature which have diminished the original proprietorial claim of the native title-holding group.

You see, the confusion in saying that the content of native title is to be determined by reference to the traditional laws and customs of the group arises from the original order in the Mabo case. Remember the court said, "Yes, the Meryam title is to be ascertained by reference to the traditional laws and customs of the group." The court did say that. But the court also said that, "The entitlement of the Meryam peoples is to possession, occupation, use and enjoyment of the land," concepts well-known to the common law and probably not so well-known to Meryam law.

In my view to properly understand the notion of native title it must be understood that the inter se rights of the native title holders have got to be ascertained by reference to the traditional laws and customs. The rights of that subgroup versus that subgroup of that individual in relation to that place at that time of the year at that stage of his life, those rights may be the subject of extremely esoteric rules under the laws and customs of that group, and the High Court is indeed right to say that the rights of that individual or that subgroup must be ascertained by reference to the relevant traditional law and custom.

But to the extent that the High Court judges lead us to the view that the rights as against the whole world of that communal group is to be ascertained by reference to their traditional law and

custom, the High Court is - I shouldn't say they're misleading us - we are misinterpreting what they must properly mean, because it would - you see, the High Court abandoned investigations into the social organisation of Aboriginal people in order to discard the notion of terra nullius. The High Court said it doesn't matter the nature of the social organisation of particular groups to determine whether they might have title to the land, because it would be racially discriminatory to ascribe title to groups that heavily settled land and developed land and not attribute title to people who were, say, in the Western Saharan case, nomads over a large domain.

The High Court said that investigation into the social organisation of the group would lead the court into inquiries that were of a racially discriminatory nature. Well, it seems to me that the High Court could not maintain a racially discriminatory inquiry in order to ascertain the content of the title; as if somehow the traditional laws and customs are going to perhaps accord a lesser notion of title than that enjoyed by other groups. So in my view, to the extent that we cling to the instruction of the High Court in relation to the content of native title being ascertained by reference to traditional law and custom, in my view that is a matter yet to be settled, and it is one of the key questions to be settled in the future.

But understood in that way it means that the forensic exercise in native title claims post-Mabo is an exercise not in determining rights under traditional law and custom so much unless there is disputation between the titleholders. The forensic exercise that should consume us is the question of what valid acts of the crown and the legislature have qualified the title of the traditional owners, and in what ways is the traditional right constrained by the existence of these valid acts? It seems to me that's a much more simple and straightforward exercise in determining what the respective rights are. But again I don't for a minute believe that people will be rushing to a consensus around my view of these things.

Getting onto the Native Title Act, the 1993 deal about which there's been a lot of talk this morning, about which there's been a lot of commentary in the media by politicians and about which there will be a lot more in the coming weeks and months, the 1993 deal was about validating the potentially invalid rights that had been accumulated by white Australians. That's what it was about: validating potential invalid rights. That's what the Native Title Act does. It was not about validating your rights and extinguishing ours as well, because if you had validity, what more did you want?

Not only is the country saying that the 1993 deal was not only, "We leave you to keep your goals, but we also expect to cut our own throats as well." It was about the question of validity. That was what Aboriginal people sought to secure and support. There was no question about saying, "Well, you know, not only do we want you to be secure in your rights, but we also want to lose ours as well."

So this question about validity and extinguishment and the distinction between the two must be clearly appreciated by everyone, and for those native title holders who had been deprived of their native title post-1975, deprived wrongfully under the law of their native title since 1975, for those native title holders, to have them in 1993 then compelled to forgo that title, to forgo their right to the recovery of that title, it seemed to me was a pretty magnanimous gesture by the Aboriginal organisations in 1993.

People forwent their rights to recover their traditional title in 1993 in order to grant security in relation to those accumulated historical grants. There could have been recovery of those invalid titles. We could have insisted that the Racial Discrimination Act struck down those grants, and we ought to be permitted to go to the courts to recover our title. But that was not the position taken by the Land Councils and ATSIC to the Federal Cabinet in 1993. The proposition was put that we support validation of those rights. Those horses have bolted out of the gate and they're gone. We simply don't want any more to bolt out of the gate without our consent.

So on 31 December 1993 there was an almighty across-the-board statutory forgiveness of wrongful dealings with native title. An absolute security was granted perhaps to hundreds and thousands of mineral and pastoral and development titles right across the country that may have been invalid under the Racial Discrimination Act. That statutory security was granted overnight at the end of 1993, and the apparatus of the Native Title Act sought to protect what was left over, sought to protect coexisting rights where the grantees under crown lands legislation had not under the law obtained an exclusive possession to land.

We sought the Native Title Act to protect those remnant rights, and a system to be established for the native title holders to enjoy those rights expeditiously. So I can't understand the argument of the farmers that they're even complaining - I mean, the High Court has said they're secure in their rights that were granted, that they've accumulated, but they're even complaining about rights that they never had. If they never under the law, in the absence of native title, had the right to run a bed and breakfast or to run a timber operation, if they never had that right, how can they now complain that they don't have an access to that right?

They can have access to that right if they treat with the native title holders. That's what the Native Title Act provides for. They can't just get it as: accumulate more rights without having to treat with the native title holders. That would be unfair. You'd be providing for the further erosion of the remnant Aboriginal rights, simply because you wanted to allow the pastoralists to do things that they were never authorised to do under the law in the first place. If a pastoralist has been running a bed and breakfast, presumably, even in the absence of native title, they've been breaking their lease conditions, and ought to have been liable to forfeiture.

In relation to the Native Title Act, this argument that somehow there was an implicit provision that native title was supposed to be extinguished in pastoral leases is absolutely illogical when you look at the Native Title Act. The Native Title Act provides, as Rick Farley pointed out, for the renewal of pastoral leases without having to treat with native title holders. That renewal provision was supported by the Land Councils in 1993, and I actually played a big role in drafting the provision that went through the Senate; to guarantee the farmers renewal of their leases.

Now, why did we have to guarantee renewal if there was no native title in those leases? Why did we have to press the Senate to reconsider the renewals provision if it was our understanding that pastoral leases were supposed to extinguish native title absolutely? And the government's, the present government's amendments to the Native Title Act put together by Senator Minchin, they have provisions allowing all kinds of dealings with pastoral leases - upgrades, conversions, variations - that would result in the extinguishment of native title.

But those provisions were put into place last year. Why? Because the government thought that native title could coexist in pastoral leases. There would be no need for those provisions if there

was not an understanding that there was the possibility of coexistence. I mean this spin that's been put by government and industry and the farmers and so on that somehow the Native Title Act impliedly or was supposed to have directly achieved an extinguishment of native title is a load of nonsense when you consider those provisions in the act that provide for dealings in pastoral leases, dealings that favour the pastoralists quite frankly.

In relation to the performance of the Native Title Act generally, you know there's a lot of opponents of Wik and Mabo who run around the country saying that, you know, "The Native Title Act hasn't worked because it hasn't delivered benefits for you people, you Aboriginal people; hasn't delivered a square hectare of land for you Aboriginal people, so you should join with us in condemning the legislation." But the Native Title Act, let me remind all Aboriginal people and indeed all non-Aboriginal people, has worked spectacularly in one important respect, and that is it has stopped State and Territory Governments, at the urging of the farming and mining sectors, it has stopped them, and at the urging of perhaps the wider public, it has stopped them from arbitrarily extinguishing native title.

Yet people say the Native Title Act has failed. Well, Richard Court passed a law to wipe out native title right across the state of Western Australia in one fell swoop, and the Native Title Act came in and said that that was wrongful; that he couldn't achieve arbitrary extinguishment. We have had more than 3 years of grizzly, miserable fights with the smartest, rat-cunningest bureaucrats and politicians who have been either trying to extinguish native title or find ways to work around native title. That's been the administration of the Native Title Act, and the native title legislation has withstood every attempt
to extinguish or ignore those common law entitlements.

So from the point of view of Aboriginal people the Native Title Act has played a very important role in providing protection. It was supposed to provide other roles - that is, identification of the remnant native title. It was supposed to provide a system for dealing with the native title whilst it remains undetermined, and in those respects the system hasn't worked well because the system is reliant upon state governments that are not intent upon extinguishment or getting past native title, ignoring it. It requires state governments that are determined to help identify where native title might remain and to put in place a system that allows for that native title to be respected and to be dealt with in a fair way.

You know, people who say that the Native Title Act has failed fail to understand that 29 Land Councils across the country spend their every day and their every week trying to resist attempts by bureaucrats and politicians to ignore native title. It's been a defensive exercise. There's been not much energy put into the business of trying to identify the native title because the act has been operating in an extremely hostile political environment, and an insistence on the part of governments to not treat native title with respect.

So to the notion that somehow the Native Title Act has done the country a great disservice and has failed, those people want you to forget, they want you to forget that the Native Title Act has provided a protection to native title that they couldn't prise open. That's what those people want you to understand. It provided a protection against their every attempt to derogate from those native title rights and to ignore them.

Finally, amendments to the native title legislation: there was a process with industry last year that was very informative for the Aboriginal participants and for the industry participants, and some understanding was reached, but at the end of the day the feeling of the Aboriginal participants in that process is that we were constantly finding solutions for the other side in the hope that in finding those solutions there would be reciprocal respect for the Aboriginal rights, and the other parties to that negotiation refused to in any way entertain propositions that might be helpful to the Aboriginal side.

That's the goddamn-dam business that I've been engaged in for 4 years; trying to find ways, trying to find ways to satisfy the white people. I've been running up hill and down dale trying to find ways of satisfying the white people in relation to native title, and urging solutions for the white people amongst Aboriginal people, so that we might get some reciprocal respect for our remnant position and, you know, after 4 years of this I come to a conclusion that there has never been, apart from Cape York Peninsula in relation to the Cattlemen's Union, there has never been reciprocal respect.

There has been no reciprocal effort by industry or by government to find solutions that actually deliver substantive outcomes to Aboriginal people. We delivered substantive outcome to Australia on 31 December 1993 when all titles and acts were validated. I would have thought that was a pretty magnanimous and sufficient opening gesture on our part. But ever since then we've just had an absolutely miserable response from industry and state governments and politicians who want, in the words of Peter Yew, to take, take, take, take, take and never give, and never give.

I understand all too clearly the generations of pastoralists who developed relationship with the country, who love the country, who know the country. I understand all too well those things. I understand all too well the darkness of the relationship that those pastoralists in many quarters have had with my father and my uncles and my grandfathers. I understand all too well the stories of people sitting out in the woodheap, being treated badly, not being paid properly, working their guts out till late at night.

I mean, I understand all too well these things - the love of the Aboriginal people for their country obviously - and yet in trying to come to terms with these realities, of the long relationship and indeed of the moral entitlement of the pastoralists to the country, in accepting that moral entitlement all we are urging is some reciprocal recognition and grace on their part in relation to our feelings for the country and our entitlement to the country that precedes by many thousands of years, theirs.

So in my view in practical terms, in terms of commercial implications, in terms of management and practical implications, the farmers as a consequence of the Native Title Act, as a consequence of the Wik decision, as a consequence of the political preparedness expressed at the Wik summit up in Cairns, the political preparedness of the Land Councils to diminish and to address those uncertainties and to diminish any commercial adversity they might face, it seems to me with the Native Title Act, Wik and the political preparedness of Aboriginal people to address those uncertainties, that the farmers have got nothing substantial to worry about.

They have got nothing to worry about. Yes, there are implications for other sectors in the community - the mining industry - and those issues, it seems to me, need to be worked out in

relation to the question of the workability of the Native Title Act which the Land Councils have always said they are prepared to discuss. They are prepared to address the question of workability, to make these things work smoother. But if you're asking the Land Councils to forgo their rights in order to achieve certainty, for Aboriginal people and their rights to be killed stone dead, and that's the only way that reconciliation can ensue, that's a baseless and idiotic proposition to put to Aboriginal people this late in our history.

The Federal Government's current amendments that have been introduced into Parliament are amendments that breach the Racial Discrimination Act, and in terms of furthering the cause of extinguishment of native title in pastoral leases, they already have provision for that. Basically the native title amendments will allow state and territory governments to continue to vary pastoral leases, to upgrade them into perpetual leases, even though they might be term leases now.

Somebody who might have an occupational licence for 12 months, renewable on 31 December, that person under the Minchin amendments may be granted a perpetual lease without ever having to treat with native title. So you could have an extinguishment of native title occur under the Minchin amendments without ever having to treat with the native title holders in relation to that extinguishment.

So people talk about the need for us to consider post-Wik amendments dealing with pastoral leases. Well, the post-Wik amendments are already anticipated in the existing amendment bill. If the amendment bill went in in its current form and got passed, well, then farmers can pull the cork out because there could be the achievement of effective extinguishment of native title in pastoral leases by action of the State and Territory Governments without ever having to deal with the native title holders. So I mean obviously in the argument ahead it's not just going to be about what new ideas emerge in response to Wik. The argument is going to be about the existing amendment bill.

Finally, the process from here onwards: I don't think that the farmers are making at all a very serious contribution towards the problem-solving challenge that Wik presents for the country. I mean, we can't expect in 1997 to have a decision like Wik that is not going to cause turbulence, that is not going to cause economic uncertainty, that is not going to cause social uncertainty. You could never have a court decision of the dimension of Wik without those implications. The challenge for us is to see whether we can work through those implications and those upheavals and those uncertainties to produce fair outcomes, and the submissions of the National Party and the National Farmers Federation do them no credit because I don't see how a blanket proposition of extinguishment of any Aboriginal right is a realistic and intelligent contribution to this problem-solving challenge.

I mean, I don't know why the National Farmers Federation would want to insist on access to legal resources to participate in claims if native title is extinguished in pastoral leases. Why would they need to be involved in further legal claims if they achieve absolute extinguishment, which is what they're calling for? The problem from our side for maintaining bald, irresponsible, ambit positions such as our opponents are able to do, is that we would quickly become demonised in the debate and our reasonable propositions for justice would be absolutely marginalised in the wider community's understanding of these issues.

So we're kind of stuck in this position of having continually to be reasonable about our ask in the face of our opponents being absolutely unreasonable; unreasonable about breaching the Racial Discrimination Act, breaching the Racial Discrimination Convention, about interfering with property rights declared by the country's highest legal institution. I mean the people in the Melbourne Club would never countenance, would never countenance interference with property rights by the legislature in as arbitrary a way as is being proposed in relation to native title.

And they are able to countenance that prospect when it comes to native title because of racial discrimination, because of the original reason why terra nullius has prevailed in this country. You see, terra nullius only existed because of racial discrimination, and the return to terra nullius will only be effected if we are prepared as a country to return to a position of racial discrimination. So in my view the state governments and the farmers have made no intelligent contribution to the debate so far.

I'm very pleased with the Minerals Council's more pragmatic and realistic assessment of the problems and their preparedness to work through these issues. The round-table that's been proposed by the Land Councils, ATSIC, with the Prime Minister, seems to me to proffer an opportunity for the country to tackle these very complicated and emotional and divisive issues in a constructive way. I attended the meeting with the Prime Minister yesterday, and I have to say his demeanor and preparedness to chair a process of Australians trying to work out these things left me somewhat heartened.

Now, I think it's probably no secret that I've had to burn my Labor Party membership card before I went in to see the Prime Minister, but it seems to me that as an observation these - I mean, I think people ought to feel it worth, people ought to feel it worth putting their energy into this round-table process to see if we can work out compromises. When I say "comprise" I don't mean capitulation. I don't mean Aboriginal people continually having to bleed in order to give satisfaction to the other side. I mean compromise in relation to making things work better, to produce good outcomes for native title holders.

I think from the meeting yesterday that that opportunity ought to be grasped, as it has been by the Aboriginal side, by other sectors in the Australian community. I mean, it's no secret that I've been an absolute critic of the existing Federal Government in relation to the questions about race and the administration of Aboriginal affairs generally. But I mean my own personal view is that - and I'm sure I share this with many Australians - John Howard's handling of the gun issue was an example of spectacular negotiation skill and leadership, and it's produced a fantastic outcome, in my own personal view, for the country.

And this Wik issue is probably an even bigger challenge than the gun debate, and I hold some - I harbour some hope that the Prime Minister and the Federal Government are going to chair - and I don't think government can dictate a solution. It's going to be up to the industry, the stakeholders, the industry people and the Aboriginal people, to work out those compromises that are going to work. It seems to me that with government facilitating that process, rather than entirely in Queensland-style wanting to dictate the capitulation scenario - it seems to me that the process proposed by the Prime Minister is one in which we should participate vigorously and with a commitment to solving problems as Australians.

Finally, again, Mabo is an opportunity. I hope that one day people might share this notion that I think only two people in this country still cling to, the notion of Mabo as a huge opportunity for the country. I mean, all the turbulence, we can work through all that; all the details, the impracticalities, the commercial threats. It seems to me the country can work through those things, but we have the opportunity to effect a lasting compromise, a lasting accommodation between the fact of original right and the fact of accumulated right.

You know, in Mabo we have the one, it seems to me, cogent opportunity to put that compromise into effect, and if we resile from that opportunity, and if we squander that opportunity, if we show infidelity towards that opportunity, I don't think another opportunity is ever going to arise again in the history of this country. 3 June 1992 was the date of Australia's redemption, and never a date will come by us again, and if we can't in the pragmatic words and thoughts and guidance of the High Court judges find a way of accommodating original right with accumulated right, then I think we're going to show that we're a lot more miserable than we're capable of being.

Thank you.