



Sovereign Union

First Nations Interim National Unity Government
Asserting Australia's First Nations Sovereignty into Governance
www.sovereignunion.mobi

MEDIA RELEASE

John Howard recognised continuing Aboriginal sovereignty in his Ten Point Plan for limiting Native Title

Michael Anderson, Tamworth, NSW 21 December 2012

With the passage of time it is now painfully obvious that former Prime Minister, John Howard, fully realised that Aboriginal peoples maintain a very powerful position in Australia, so much so, that by amending the Native Title Act in 1998 he demonstrated the inherent power of Aboriginal peoples, which stems from our continuing sovereignty.

Having now reviewed his Ten Point Plan it is important for us, as First Nations Peoples, to revisit John Howard's amendments and what they meant.

1. Validation of acts/grants between 1/1/94 and 23/12/96

Howard's Ten Point Plan promised 'bucket loads' of extinguishment of Native Title after the Wik decision, in which the High Court found that Native Title continued to exist on pastoral leases in Queensland. This sent the Howard government into a fervent need to create 'certainty' for the non-Aboriginal landholders, driven by the fear in existing landholders of our continuing connection to Country.

It is necessary to understand that when Native Title claimants are to prove continuing connection to Country, we are claiming our sovereign rights to the native vegetation, waters, soil, and to that which is below and that which is above, that we have the stories about and have knowledge of. This affirms a greater right of law under the Native Title regime than ordinary non-Aboriginal proprietary claim to land. Without being able to show connection to all things natural under our Law and custom, we cannot win Native Title under this regime. It must be understood that our interests are sovereign interests.

In order to avoid paying 'just' compensation, a property right guaranteed in the Australian constitution, Howard followed the NSW precedent where they validated the taking of 33,000 ha of former Aboriginal reserves without any form of compensation.

- 2. Confirmation of extinguishment of native title on 'exclusive' tenures: States and Territories would be able to confirm that 'exclusive' tenures such as freehold, residential, commercial and public works in existence on or before 1 January 1994 extinguish native title. Agricultural leases would also be covered to the extent that it can reasonably be said that by reason of the grant or the nature of the permitted use of the land, exclusive possession must have been intended. Any current or former pastoral lease conferring exclusive possession would also be included.**

In effect 'State governments are empowered to extinguish Native Title over crown

lands for matters of 'national interest'.

When looking at this 1998 amendment the reality of this section is quite frightening, because those who know and understand history will realise that Adolf Hitler made a similar policy in respect of lands for Germans only; a law that only those who have been subjected to it will truly understand its implications and resulting effects. For many Australians, white and black, the significance of this goes without notice and the impact it has on our people, who are trying to reclaim their identity, their culture and their law.

One finds a dreadful need of government to give the appearance of absolute patriotism and protection of country, but in fact the law itself is absolutely racist and, in Australia's case, it is ingeniously subtle at disguising intended racism. In this case, like Hitler, the government is protecting the country for people who are of European and Anglo-Saxon extraction. They now find themselves, however, in an economic and political conundrum, especially if we look at Bill Heffernan's recently expressed concerns about foreign ownership in this country.

3. Lands providing public amenities are exempt from Native Title claims

John Howard in his endeavours to protect country for non-Aboriginal people lost his way on this one. Which land areas should be classified in the 'national interest' was unclear and ambiguous, but was done with a clear desire to take away any rights for Aboriginal people. It is ironic that we now have a Labor government expressing concern about the amount of foreign investment in the country, but this is about to bite the hand that feeds it, if the Gillard government tries to restrict foreign investment in land and development. In this case, Australia may have bitten off more than it can chew and it is no wonder that the opposition leader, Tony Abbott, is trying to make hay while the sun shines. But I dare say that neither he, nor the government, has the appropriate solutions.

4. Pastoral leases and mining are allowed to co-exist with Native Title

Given this is written in to the Native Title Act as part of the Ten Point plan, I implore every Aboriginal person, who is trying to get their Country back through the Native Title process, to take a close and second look at what they are doing and to be very careful about accepting the legal advice given by the non-Aboriginal lawyers purporting to be looking after your interests. We must remind ourselves that each of these lawyers has made a pledge, which commits themselves to the Crown and the courts that belong to the Crown. I remind people that it has always been said that the only ones that are benefitting out of Native Title are the lawyers, who assert they are experts on Native Title claims. At the grassroots MABO stands for Money Available Barristers Only.

Within this amendment is a clear indication by the Howard government that somehow the Australian government must acknowledge the need to co-exist with the true sovereign people of the soil. This part of the amendment affirms our continuing sovereignty.

5. The statutory access rights guaranteed continuing access to pastoral leases where claimants currently have physical access until the Native Title claim is settled.

This part of the intended amendments provides us with a clear insight in to the fact

that the Howard government knew full well they could not deny us our rights to access country. Consequently they have made an admission that they could not deny the true owners of this country access to their most sacred places and country. It is most unfortunate that the lawyers who purport to act in our interest fail to inform the applicants of these entrenched rights and thereby continue the denial of Aboriginal people to have access to their ancient lands and sacred sites. This also begs the question as to why people, such as the National Aboriginal Congress, continue to fail our people by not using the fiscal resources that they have to explore that which we can, as the Sovereign Union, which has no money at all.

6. Higher registration tests are imposed on all claimants where mining is planned on 'crown lands':

The registration test that has been put in place is nothing but a fraud. The world needs to know that the Australian government consistently argues in international fora that it is, in fact, a nation state separate from the colonial homelands of Britain, but in reality, under statute, all rights and interests that the British Crown has in this country are protected within this Native Title Act. An example of this is the preservation and protection of the Crown's rights and ownership over our natural resources, eg Gold.

If we are to look at the registration test it will be soon realized that any applicant attempting to register an interest in gold (a 'royal mineral') through their Native Title claim, will automatically fail the registration test. This is a clear demonstration of what *tyrannical* law is and the Australian government has the audacity to tell the world that they are trying to 'Bridge the Gap' of 'disadvantage'.

When we read the intent of this section, then we understand how easy it is, through sleight of hand and sleight words, to pervert the course of justice. It is said within all legal circles that justice must not only be done, but also must be seen to be done. In this case Australia deceives all and denies justice to many with impunity.

It is absolutely imperative that every block of land, where a mining tenement has been given, is thoroughly researched in respect to its former tenure, and it is essential to articulate the Aboriginal totemic systems and spiritual beliefs that are clearly connected to trees, plants, animals, and aquifers beneath the soil etc. If claimants are to win Native Title under the Native Title regime it will be essential to prove our continuing connection, which makes it absolutely necessary for the mining companies to first negotiate on each and every item they seek to destroy.

7. The right to claim Native Title in or around urban areas is removed

With the intention of this plan it is no wonder the ACT Chief Minister was so adamant in his correspondence to the Prime Minister that if the Federal government was to proceed with this amendment then he, on behalf of the ACT government, required a written guarantee from the federal government to pay all 'just' compensation (guaranteed in the Australian constitution) that will have to be paid with the extinguishment Native Title to 'Crown land' in the ACT.

8. Government is permitted to manage land, water, and air issues in any site

This is a very clear acknowledgment that Aboriginal peoples do have sovereign title to not only land water and air space, but also to the culture as well and no white or black lawyer registered to practice in this country will tell you, nor admit to

Aboriginal people that we do have sovereign title to this country. Why else would Howard use the phrase 'permitted to manage'?

9. Very strict time limits will be placed on all claims

This is an attempt to introduce legislation to coerce people into giving away their sovereign rights under an act of duress and I wish to remind all our people that whatever you have done in the past in respect to Indigenous Land Use Agreements (ILUAs) and other arrangements, and to those thinking about signing ILUAs, that you ensure that you instruct the lawyers to record in writing that you have done these *deeds by coercion whilst under duress*; and that these *acts have never been with your full, prior and informed consent*. We do know that many Aboriginal people, who have signed ILUAs to date, don't even know the true meaning of what they have done, because the implications of signing an ILUA have not been fully explained, in particular what the ILUAs take away from their inherent birth right.

10. Indigenous Land Use Agreements will be created to promote co-existence.

From my position as a political activist of many years, this clearly reaffirms the question mark that successive Australian governments have with respect to our continuing sovereignty, because clearly they seek to co-exist with us. It is from this position that we should be asserting our sovereign rights to ensure a brighter and much more prosperous future for our current and future generations. In this regard we only have to use what John Howard and his government acknowledged in the Ten Point Plan.

Contact: Michael Anderson 0427 292 492 ghillar29@gmail.com

www.sovereignunion.mobi

See Background: Attached

BACKGROUND

John Howard's Amended Wik 10-Point Plan

May 08, 1997

The Prime Minister released the following statement to the media on 8 May 1997, updating the original 10 Point Plan released on 1 May 1997.

AMENDED WIK 10 POINT PLAN

I release the amended 10 point plan, which includes the wording change I discussed with Mr Fischer and Mr McDonald on Tuesday.

Mr Fischer and I met today and agreed that the attached document reflected the understanding reached on Tuesday.

The only amendment is at the end of point two.

This change, which makes no difference to the substance of the plan, confirms that a pastoral lease conferring exclusive possession would extinguish native title. This in fact reflects the common law as expressed by the High Court in the Wik decision.

The comments made on radio earlier today by the Chairman of the Reconciliation Council, Mr Pat Dodson, were both intemperate and inaccurate. They did nothing for the cause of reconciliation.

At all stages I have been candid and direct with indigenous leaders over the native title issue.

From the very beginning, I said it was simply not possible for the state of the law immediately post-Wik to be maintained. I have never denied that major changes to the right to negotiate were essential.

Indigenous leaders have repeatedly been told by me that pastoralists and farmers must be guaranteed the right to carry on their normal day to day activities without fear of interference or hindrance.

My aim has always been to strike a fair balance between respect for native title and security for pastoralists, farmers and miners.

That is one reason why I staunchly oppose blanket extinguishment of native title on pastoral leaseholds.

The fact is that the Wik decision pushed the pendulum too far in the Aboriginal direction. The 10 point plan will return the pendulum to the centre.

KEY LEGISLATIVE ELEMENTS OF THE PACKAGE

1. Validation of acts/grants between 1/1/94 and 23/12/96

Legislative action will be taken to ensure that the validity of any acts or grants made in relation to non-vacant crown land in the period between passage of the Native Title Act and the Wik decision is put beyond doubt.

2. Confirmation of extinguishment of native title on 'exclusive' tenures

States and Territories would be able to confirm that 'exclusive' tenures such as freehold, residential, commercial and public works in existence on or before 1 January 1994 extinguish native title. Agricultural leases would also be covered to the extent that it can reasonably be said that by reason of the grant or the nature of the permitted use of the land, exclusive possession must have been intended. Any current or former pastoral lease conferring exclusive possession would also be included.

3. Provision of government services

Impediments to the provision of government services in relation to land on which native title may exist would be removed.

4. Native title and pastoral leases

As provided in the Wik decision, native title rights over current or former pastoral leases and any agricultural leases not covered under 2 above would be permanently extinguished to the extent that those rights are inconsistent with those of the pastoralist. All activities pursuant to, or incidental to, 'primary production' would be allowed on pastoral leases including farmstay tourism, even if native title exists, provided the dominant purpose of the use of the land is primary production. However, future government action such as the upgrading of title to perpetual or 'exclusive' leases or freehold, would necessitate the acquisition of any native title rights proven to exist and the application of the regime described in 7 below (except where this is unnecessary because the pastoralist has an existing legally enforceable right to upgrade).

5. Statutory access rights

Where registered claimants can demonstrate that they currently have physical access to pastoral lease land, their continued access will be legislatively confirmed until the native title claim is determined. This would not affect existing access rights established by state or territory legislation.

6. Future mining activity

For mining on vacant crown land there would be a higher registration test for claimants seeking the right to negotiate, no negotiations on exploration, and only one right to negotiate per project. As currently provided in the NTA, states and territories would be able to put in place alternative regimes with similar right to negotiate provisions.

For mining on other 'non-exclusive' tenures such as current or former pastoral

leasehold land and national parks, the right to negotiate would continue to apply in a state or territory unless and until that state or territory provided a statutory regime acceptable to the Commonwealth which included procedural rights at least equivalent to other parties with an interest in the land (e.g. the holder of the pastoral lease) and compensation which can take account of the nature of coexisting native title rights (where they are proven to exist).

7. Future government and commercial development

On vacant crown land outside towns and cities there would be a higher registration test to access the right to negotiate, but the right to negotiate would be removed in relation to the acquisition of native title rights for third parties for the purpose of government-type infrastructure. As currently provided in the NTA, states and territories would be able to put in place alternative regimes with similar right to negotiate provisions.

For compulsory acquisition of native title rights on other 'non-exclusive' tenures such as current or former pastoral leasehold land and national parks, the right to negotiate would continue to apply in a state or territory unless and until that state or territory provided a statutory regime acceptable to the Commonwealth which included procedural rights at least equivalent to other parties with an interest in the land (e.g. the holder of the pastoral lease) and compensation which can take account of the nature of co-existing native title rights (where they are proven to exist).

The right to negotiate would be removed in relation to the acquisition of land for third parties in towns and cities, although native title holders would gain the same procedural and compensation rights as other landholders.

Future actions for the management of any existing national park or forest reserve would be allowed.

A regime to authorise activities such as the taking of timber or gravel on pastoral leases, would be provided.

8. Management of water resources and airspace

The ability of governments to regulate and manage surface and subsurface water, off-shore resources and airspace, and the rights of those with interests under any such regulatory or management regime would be put beyond doubt.

9. Management of claims

In relation to new and existing native title claims, there would be a higher registration test to access the right to negotiate, amendments to speed up handling of claims, and measures to encourage the States to manage claims within their own systems.

A sunset clause within which new claims would have to be made would be introduced.

10. Agreements

Measures would be introduced to facilitate the negotiation of voluntary but binding

agreements as an alternative to more formal native title machinery.

DEFINITION OF 'PRIMARY PRODUCTION'

Income Tax Assessment Act 1936 - section 6:

'primary production' means production resulting directly from -

(a) the cultivation of land;

(b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase;

(c) fishing operations;

(d) forest operations; or

(e) horticulture;

and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

Mabo, Wik and the 10-point plan

From: *Teaching History*, Journal of the History Teacher's Association of NSW, Vol. 32 No.1 1998

THE WIK CASE

The Wik people of Cape York in Queensland claimed that in spite of their traditional lands being subject to pastoral leases, they retained Native Title rights to their lands. Eventually their case went on appeal to the High Court of Australia.

The High Court handed down a judgement, the Wik High Court judgement, on 23 December 1996 which held that a pastoral lease did not always extinguish Native Title, that in some cases Native Title rights could survive the grant of a lease.

This judgement was based upon historical documents from 1848 which advised the Governor of New South Wales that "...leases granted for this purpose give the grantees only an exclusive right of pasturage for their cattle... but are not intended to deprive the Natives of their former rights to hunt over these districts... in search of subsistence, in the manner to which they have been... accustomed".

The judgement said however, that if there was any conflict between the rights of the pastoralist lease holder and the Native Rights holder, then the pastoralist's rights would always be upheld.

Why not just extinguish Native Title on pastoral leases?

Native Title is a property right. Property rights are guaranteed by the Australian Constitution and cannot be taken away without the payment of 'just' compensation.

The role of the Racial Discrimination Act

The 1975 Racial Discrimination Act ensures that governments, Commonwealth, State and Territory, must treat Aborigines in the same way as all landholders.

Compensation?

The potential cost of compensation for extinguishment of Native Title on pastoral leases remains an unknown. The Prime Minister has promised that States and Territories will receive help with compensation.

Objections to Wik

- ◆ Pastoral lease holders occupy 42% of the Australian continent. They once believed they held rights to fully manage the land, subject to the terms of their lease, the various Land Acts and the general law
- ◆ They claim that the Wik High Court judgement has complicated and confused the terms under which they operate as "...the land's custodian, charged with the responsibility of productively using the land to its best advantage"
- ◆ They will now have to negotiate with any Aboriginal people who can prove a Native Title right to a pastoral lease if they want to do anything beyond the scope of their lease
- ◆ They claim the value of their properties will be affected
- ◆ Governments will be liable for payment of compensation if any Native Title rights on pastoral leasehold land are affected

MR HOWARD'S TEN POINT PLAN

1. Validation of acts/grants

The validity of acts or grants made on non-vacant crown land since the Native Title Act will be guaranteed by law.

2. Extinguishment of Native Title on "exclusive" tenures

"Exclusive" tenures such as freehold, residential, commercial and public works (in existence on or before 1 January 1994) would be confirmed by state and territory laws.

3. Government services

The provision of government services to land on which Native Title may exist would now be made easier.

4. Native Title and pastoral lease

Native Title rights over land held under agricultural and pastoral leases would be permanently extinguished if they interfere with the rights of the leaseholder.

Activities other than farming and grazing would be allowed on pastoral leases, even if Native Title exists, provided the dominant purpose of the lease remains primary production.

5. Statutory access rights

If those who register a Native Title claim can demonstrate that they currently have access to land held under a pastoral lease, access to that land will be guaranteed by law until the Native Title claim is settled.

6. Future mining

For mining on vacant crown land:

- ◆ the registration "test" for a Native Title claim would be more difficult
- ◆ there would be no negotiations over mining exploration.
- ◆ only one Native claim for negotiation would be allowed for each mining project
- ◆ For mining on "non-exclusive" tenures, such as current or former pastoral leases:
- ◆ the right to negotiate would continue to apply until State and Territory governments provided arrangements acceptable to the Commonwealth government. compensation would take account of the currently co-existing Native Title rights

7. Future development

For vacant crown land outside cities and towns:

- ◆ the registration "test" for negotiation of a Native Title claim would be more difficult
- ◆ there would be no negotiations over acquisitions for government-type infra-structure
- ◆ For compulsory acquisition of Native Title rights on other "non-exclusive" tenures, such as current or former pastoral leases or national parks:
- ◆ the right to negotiate would continue to apply until State and Territory governments provided arrangements acceptable to the Commonwealth government
- ◆ compensation would take account of the currently co-existing Native Title rights
- ◆ future management actions for national parks or forest reserves would be allowed for future activities such as taking of timber or gravel on

pastoral leases would be allowed for

8. Water resources and airspace

The ability of governments to regulate and manage, surface and subsurface water, offshore resources and airspace, and the rights of those with interests in these areas, would be put beyond doubt.

9. Management of claims

For new and existing Native Title claims there would be:

- ◆ a more difficult registration "test" for negotiation of a Native Title claim
- ◆ amendments to speed up the processing of claims
- ◆ encouragement for States and Territories to deal with claims
- ◆ a sunset clause within which claims had to be made

10. Agreements

Measures would be introduced to encourage the negotiation of voluntary but binding agreements as an alternative to formal Native Title agreements.

THE ABORIGINAL POSITION

Aborigines called for the negotiation of co-existing rights and rejected the upgrading of pastoral leases.

Upgrading of pastoral leases without satisfactory legal measures to support Aboriginal property rights was described as unfair.

Compensation for loss of Native Title rights was also rejected because compensation did not take account of the public policy issues raised by pastoral leases becoming defacto freehold.

Scientists and conservationists supported Aboriginal concerns about the proper future management and environmental sustainability of Australia's rangelands.

(Adapted from the Sydney Morning Herald, 3 May 1997)

Reproduced with the permission of the History Teacher's Association of NSW.