

APPENDIX 3

AMENDED WIK 10 POINT PLAN



PRIME MINISTER

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.

This will be based on the definition in the Income Tax Assessment Act 1936_ a copy of which is attached

- 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 co-existing 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.

