Native Title, Poverty and Economic Development

The Mabo Lecture

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[THIS IS THE ORIGINAL VERSION; DELIVERY VERSION SHORTENED]

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I acknowledge the united Ngunnawal Elders Council for their welcome yesterday. I would also like to acknowledge Matilda House for her moving opening ceremony and speech. I have known Matilda for many years, and her unflagging goodwill and fine spirit are a constant inspiration. I acknowledge the long history of events of importance to indigenous people that

occurred here in the nation's capital located on your traditional country. I thank you and honour all of you.

I honour the legacy of Eddie Koiki Mabo whom this lecture commemorates. I acknowledge Mrs Bonita Mabo and her family who stood by Koiki throughout his long, determined struggle, of which we are the beneficiaries. I acknowledge Doug Passi, Chairperson of Mer ged Kem Le, and his colleagues, James Bon who spoke on his behalf, John Tabo, Adrian Hepi, Ned David and Seri Stephen. Koiki stood up to the might of the State of Queensland and the Commonwealth and demanded change. As a result, Australia is a more honourable nation. With his co-claimants, he destroyed *terra nullius*, the legal basis upon which Australia was colonised and achieved common law recognition of native title. He was born in 1936 on Mer, or Murray Island, one of the smallest and most remote islands in the Torres Strait.

I believe that if he were alive today he would be sadly bemused by the treatment of native title by governments. This does not in any way detract from his great legacy. It should inspire us to solve these problems—and I will later outline some of them. Let me say a few things about Koiki Mabo so that those who did not know him might have a sense of our debt to him. I have drawn on

the work to his close colleague and friend, Noel Loos, for much of the details of his life.

Koiki grew up on Mer, or Murray Island, in his own Melanesian Australian culture with his own language, Miriam, closely related to those of the Kiwai region in New Guinea. His second language was Brokan, a kriol understood throughout the Torres Strait. English was his third language and like other Islanders at the time he had a very limited grasp of it. He believed his ancestors had colonised the Murray Islands from the north-east and could recount a genealogy that went back seventeen generations. Traditionally, the Meriam were agriculturalists. Their identity, status, economic and social life derived from the plots of land they inherited within villages. But they were also sea-faring people who travelled by canoe throughout the archipelago and further.

But the society Koiki Mabo grew up in was no longer free and independent. From 1871 it had been a London Missionary Society mission but, as increasingly, the Torres Strait Islands had become part of the pearlshell, *beche de mer* and trochus shell fisheries, the Queensland Government had extended its border in 1872 and 1879 to control the industry. Throughout the twentieth century,

the Queensland Government had segregated the Islanders from contact with mainland Australia under the policy of protection while fostering the development of a cash economy based on the fisheries. The Islanders could sell only to the Government and were paid much less for their trochus and pearl shell. The crew's wages were also meagre in comparison with wages paid on boats owned by white businessmen.

After the 1936 Torres Strait Island wide Maritime Strike, the Government used a form of soft control through each Island's Council, which was effective but very different from their administration of Aboriginal Reserves. A teacher-administrator on each island and a Protector based at Thursday Island complemented this form of Queensland control. One enlightened teacher, Bob Miles, recognised Koiki's potential and fostered his grasp of English and encouraged him to master white culture. In 1985, Koiki reflected on his early life:

> *My lifetime on Murray, I think, was the best time of my life I ever spent, growing up on Murray and having an opportunity to learn both the whiteman way of life from my*

schoolteacher Robert Miles, and my traditional heritage as well.[1]

This childhood idyll came to an end when Koiki reached adolescence and ran foul of the puritanic values the Islanders had accepted. At fifteen, he was found guilty of a youthful 'misdemeanour' and banished from Mer for twelve months. On Thursday Island, the then Protector of the Torres Strait Islands, Pat Killoran, prevented him from going south and set him to work on local trochus luggers. Koiki realised how powerless Islanders were before the white colonialist administration and its agents, the Islander Councils. He continued working on trochus luggers for a number of years and visited mainland ports such as Cairns and Halifax, soon discovering that the Islanders were being exploited as cheap labour. At this time in the late 1950s, the pearlshell and trochus industries were collapsing because of the competition from the newly developed plastics. Islanders were being allowed to travel to the mainland to find work in such low status, labouring jobs as cane cutting and fettling on the railways. Mabo's mother, Maiga, urged him to find work on the mainland where the Islanders could at least get equal pay in

[1] Loos and Mabo, **ibid,** p. 29.

these demanding jobs, a pay that seemed lavish compared with their previous experience.

In 1959, the twenty-three year old Mabo had a job working on the railways at Hughenden in western Queensland when he married Ernestine Bonita Nehow. When in town, they had to sleep on the railway station, even with little children, as the publicans refused them accommodation.

Early in his life he realised that he had to master the ways of the Whites to develop his full potential in the land they dominated, but never to lose his Islander custom and language. His flaring imagination, intellect and courage, finally enabled him to persist through the ten years of the Meriam High Court Challenge that acknowledged the Native Title that Aboriginal and Torres Strait Islander people had to their land 'since time immemorial'. Heard by the Supreme Court of Queensland, the Mabo case was appealed to the High Court of Australia. Eddie Koiki Mabo with three of his fellow traditional owners of Mer, or Murray Island, who instigated the case in 1982, stood on the shoulders of courageous men who refused to be denied their rights. These earlier leaders included Milirrupum and other

Yolngu clan leaders, who in 1965, after unsuccessfully petitioning the Parliament in Canberra with a plea to recognise their land ownership and desist with a lease and project approval arrangement for a bauxite mine, asserted their ancient rights to their land in the Supreme Court of the Australian Capital Territory. The findings in this case by Justice Blackburn argued an eighteenth century treatise on the supremacy of imperial powers who obtained colonies around the world, as Blackstone had argued in 1831, which were either conquered or ceded. Australia was in the latter category, according to Blackburn, because Aboriginal property systems—belonging to the society of an inferior race—were incapable of recognition. The Mabo arguments successfully challenged this antideluvian view. Koiki Mabo died of cancer on 21 January 1992, four months before the High Court decision swept away the concept of terra nullius. This is now referred to as The Mabo Decision, or sometimes simply Mabo.

The High Court declared on June 3rd 1992 that the Meriam people were holders of native title, overturned the concept of *terra nullius*, and in considering the possibilities, left open the possibility that native title might apply elsewhere where

Aborigines who could demonstrate their connection with the original people before Annexation and maintained a continuity of traditions in relation to their land. Native title was extinguished wherever there was an inconsistent legal title, such as a freehold and certain types of leasehold. The question of whether national park gazettals or pastoral leases impaired native title was not answered, and many other matters were left for future courts to decide.

It was the Mabo case that brought matters to a head, this time in the federal arena where the representatives of State Governments, industry bodies for the mining, exploration, agriculture and cattlemen lobbied hard with substantial media clout for a land management system that favoured their interests. The reaction of the vested interests ranged against the indigenous inheritors of native title was hysterical and vindictive. While the Murray Islanders celebrated, pastoralists and miners expressed more and more wild theories and fears for the future of the Australian land tenure system and whether Aborigines would demand compensation. Without certainty for their titles, investment would dry up, they asserted. The Deputy Prime Minister called the High Court Judges 'pissants.' Even though the

Prime Minister, Paul Keating reassured them there was and could be no legal challenge to freehold or leasehold title, the campaign of fear continued until the end of 1993 when legislation affirming the common law as discovered by the High Court was passed by the Senate.

Prime Minister Paul Keating's support for the common law which the High Court had confirmed in the Mabo case was a beacon for Aboriginal leaders who hoped that the judgment might deliver justice at last. Keating had called the state premiers and industry representative bodies to Canberra to resolve the mounting national debate that pitted the farmers and miners against Indigenous people in a vicious debate based on fear and bald lies about the supposed threat to the Australian land tenure system that native title represented. Aboriginal leaders, including Noel Pearson who headed the Cape York Land Council, Mick Dodson, who had campaigned at the UN in Geneva and New York for recognition of indigenous rights, David Ross from the Central Land Council and Peter Yu from the Kimberley Land Council, the late Charles Perkins, former head of the federal Department of Aboriginal Affairs, among many others— convened in Canberra to fight back.

That was a defining moment in the short history of native title in Australia. I remind you of this history because we are presently embroiled in another conflict about the recognition of native title. The scale of what we could lose this time rivals that of 1993. The Mabo Lecture has a special place in Australia's public discourse. Those who have delivered it in the past have looked to broad policy and human rights developments. With the Federal Government issuing various technical proposals, my lecture may seem more technical than usual. I hope that you will bear with.

The native title regime has reached the crossroads where the 'market' and 'non-market' pathways of human social development intersect. The negotiating sector of the native title system arrived at this junction some time ago while governments and sections of the native title industry are trailing behind the negotiators, mostly the dedicated and assiduous staff of some Native Title Representative Bodies and the traditional owners who have settled agreements about land access.

At this junction, we face several crucial challenges. The main one is that the land access transactions which traditional owners and their representatives have conducted are being characterised erroneously as public finance by the federal, state and territory

governments, and in the latest 'consultation' paper, entitled *Native Title, Indigenous Economic Development and Tax*. Senator The Hon Nick Sherry, Assistant Treasurer, in his Foreword writes:

> *In response to the concerns that the potential income tax implications of native title claims are complex and uncertain, the Government plans to consider options for reform in this area. This consultation paper outlines three approaches:*
>
> *An income tax exemption;*
>
> *A new tax exempt vehicle; and*
>
> *A native title withholding tax.*[2]

In the paper, the federal Government's approach is explained:

> *Compensation payments for the extinguishment or voluntary surrender of native title rights would generally be regarded as compensation for the loss of a pre-Capital Gains Tax capital asset and therefore any capital gains or losses would be disregarded. However,the form of the payment may affect whether the payment is assessable for income taxt purposes. For example, periodic payments may be ordinary income and subject to income tax. Similarly,*

[2] Page V, Australian Government, *Native Title, Indigenous Economic Development and Tax. Consultation Paper, May 2010.*

payments for the suspension of native title could be regarded as receipts in the nature of a return on a capital asset and therefore would normally be regarded as ordinary income.

There is a critical problem for us in this position, I believe. In order to understand it, we need to go back to the design of the statutory recognition of native title in 1993. The effect of the Racial Discrimination Act 1975 was a fundamental issue. Titles issued by the Crown after its promulgation were invalid because the extinguishment of native title was racially discriminatory – there were no recognised native title claimants to negotiate with during the period between October 31, 1975 (the date of effect of the *RDA*) and the proposed promulgation date of the *Native Title Act* in early 1994. The Crown in this context meant all the States and the Northern Territory, and in some cases, the Commonwealth. Compensation is payable but the titles were not invalidated. The States, Northern Territory and the Commonwealth were fearful of the compensation due for that historical extinguishment and therefore an artificial date for the full effect of the RDA was set at early 1994 in the Native Title Act. This compensation remains payable.

This goes to the constitutional right of land owners to be compensated at a fair market value in the case that their land is compulsorily acquired. After the Mabo case, and the recognition of native title in the first statute, the Native Title Act 1994, this meant that native title extinguishment became subject to this constitutional right because the issue of a grant of title and the impairment or extinguishment was the equivalent of compulsory acquisition.

However, the States and the Commonwealth have refused to pay compensation except in some exceptions where it has become a matter of convenience to do so, and in some cases there have been cash compensation settlements and land swaps for the extinguishment or surrender of native title.

It is the Crown that is liable for compensation.

This brings us to the nature of native title payments and the issue of whether they constitute assessable income for the purposes of the Australian income tax system. I sense a gross injustice here. It is my view that the governments have shed their responsibilities to pay compensation for the extinguishment of native title onto the private sector proponents of projects on land with native title rights and interests. Hence, in the

consultation paper native title payments arising from agreements made by native title holders or traditional owners are characterised as ‘compensation.’ In the consultation paper, Crown and private payments are treated as the same. I believe this is wrong although it is only just that capital gains or losses should be disregarded. How can these native title payments arising from agreements for land access be considered ‘compensation’ when only the Crown can compensate for extinguishment? This is native title law. Properly, these payments should be regarded as transaction costs incurred by private sector parties seeking to gain land access from native title parties. If extinguishment is required then the Crown must still be a party. This ‘delegation’ of the duty to negotiate and pay compensation is achieved through the indigenous land use agreements, Future Act process and non-extinguishment principle.

These transaction costs have a perfidious nature: the private sector parties, usually mining and energy companies, and sometimes, other proponents from other industries, are substituting for the Crown’s responsibility to compensate. The native title payments are a ‘shadow’ system which especially the

resources industry have adopted by default because of the refusal of the Crown to pay compensation.

Having refused to pay compensation to native title parties for the extinguishment of native title by the Crown's issuing of mining and other titles and tenements to mining and energy companies, and deflecting their responsibility to the companies who laboriously negotiate some revenue-sharing native title payments from their project income, the government consultation paper highlights that these payments could be taxable, if not in the first instance then in relation to further payments to individuals and various uses of the money by native title corporations. If the law is not reformed, it could be interpreted as making these payments taxable. This is what has prompted the Treasury to float the idea of an exemption.

Moreover, as many people at this conference have complained, there are politicians from Western Australia and other states as well, who purport that native title payments are somehow public money that the states can confiscate to pay for urgently needed public infrastructure in Aboriginal communities.

The Honourable Brendon Grylls MLA, Minister for Regional Development; Lands; Minister Assisting the Minister for State

Development; Minister Assisting the Minister for Transport, relying on gossip and innuendo, has led a campaign of misinformation that could deprive native title holders of their assets, and of justice. He was reported in the following way:

> *A native title deal being negotiated with a Pilbara Aboriginal group has the potential to funnel up to $100 million a year to fewer than 200 people.*
>
> *Details of the secret deal have been leaked to The West Australian to throw the spotlight on how the native title process has brought limited benefits to most of the Pilbara's Aborigines - but has enriched a few families.*
>
> *Regional Development Minister Brendon Grylls is leading a State Government campaign to try to unlock hundreds of millions of dollars held in secretive native title trust funds and ensure that the benefits are spread more widely than the small family groups that control many of them.*
>
> *There is a growing realisation among Pilbara miners that the cash paid since the late 1990s for access to land has*

brought very limited social improvement in terms of jobs, better health, education standards and living conditions.[3]

We must object in the strongest terms to this nonsense. Very little of this report is based on fact. These conditions among the Pilbara Aboriginal communities which he bemoans so forcefully are the responsibility of the WA state government, not mining companies. So in an attempt to get a third bite at the pie—after extinguishing native title without Crown compensation, then forcing the mining companies to pay it on his behalf, he wants the money to pay for the responsibilities of his own government. But it has been thus since the Aboriginal Land Rights Act began to deliver some benefits for Aboriginal people in the Northern Territory over thirty years ago, a ploy which the Country Liberal Party – in power for much of that time—used to pay for its extravagant apartheid society.

These payments are private transactions, but as substitution for crown compensation, they should not be taxable in their primary form. Indeed, if governments want more investment from Aboriginal trusts receiving these funds in providing the citizenship rights which Governments are responsible for, they

[3] http://www.nirs.org.au/index.php?option=com_content&view=article&id=2967:pilbara-native-title-deal-too-secretive-brendon-grylls&catid=2:news-broadcasts&Itemid=65
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should not only make them non-assessable, and recognise their status in lieu of Crown compensation, but also provide partner funding in much larger amounts than present to close the gap and to make up for the original wiping of the slate of their compensation responsibilities which I outlined earlier. Our rights have been denied with respect to the compensation owing on post 1975 titles. We believed at the time that we negotiated the terms of the Native Title Act that the native title system, with its future act regime and right to negotiate, would deliver a semblance of justice. The present flurry of measures being considered by the federal and state governments could result in a rank injustice in the context of that history of the design of the native title statute.

The secondary and subsequent income from these monies might be assessable for taxation purposes.

These secondary incomes are alluded to in the consultation paper, although their status is not made clear.

Then there is the problem that the great majority of the agreements negotiated resulting in payments to native title holders produce only miniscule payments each year—less than the annual wage of a cleaner, and yet the registered native title

prescribed bodies corporate which number in the hundreds are expected to administer their affairs with occasional tiny government grants and for those with agreements usually these are pathetically small payments. Only a small minority result in the payments at such levels that they entice the likes of The Honourable Grille to seek a way to confiscate them. Yet, the surveillance regimes and the possibility of taxation on distributions by Aboriginal trusts being proposed will result in the rankest of injustices for the small prescribed bodies corporate – already unsustainable – to cope with yet more administration and reporting. The small minority receiving larger payments will also suffer in that the costs of administration and surveillance they will bear will detract from their ability to invest in the future through economic development, education and community development.

Another crucial challenge is that—unlike in the tax regime –AND PLEASE NOTE THE GLARING CONTRADICTION—in relation to housing and titling for community infrastructure—our land assets are not typically regarded as capital assets, but rather as economically 'dead' assets. This perception was embedded in policy approaches developed by the previous federal Government

and is pursued now to a lesser extent by the present federal Government. Thus, our challenge is to identify the means for converting some portion of our land assets from typically non-rent producing to rent-producing to enable these assets to be used as economically productive platforms for development.

Among those who noticed the road train arriving was Helen Hughes (2007). Like some relatively uninformed public commentators she characterised the native title and other Aboriginal tenures as 'dead' assets because of their 'non-market' nature and advocated for their conversion into 'market' titles with the productive capacity to attract investment capital, enable commercial enterprise and individual ownership. This one-dimensional caricature of Aboriginal tenures has caused Aboriginal title owners and their advisers from the native title and land rights fields considerable angst. The argument posited by Hughes and others is flawed in several ways. First, the assumption that our land assets are 'dead' or non-rent producing must be questioned. Much that I have said so far about income derived from agreements is evidence of that. Second, the assumption that only Aboriginal titles should change and not other mechanisms in the land for capital exchange must be questioned. Third, the efforts to date by the previous and present federal Governments to convert Aboriginal tenures into various lease types and other tenures to enable housing construction—just one form of capital accumulation urgently required in the Aboriginal domain—have been experimental and

random and their sustainability may be in jeopardy. Fourth, there is an urgent need for rigorous empirical evidence of several fundamentals in this debate before the Aboriginal land assets accumulated at great human and financial cost during the last three decades are tampered with.

The release of the *Indigenous Home Ownership Issues Paper* by The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs indicates that there is growing awareness of the need for a reconsideration of these matters.

In that Issues Paper, we are told that: 'Traditionally, individual home ownership has not been possible on community-title land.' It is important to question this: this situation is not because of the nature of the underlying title or the statutes which provide for their existence but because of the refusal of governments to consider other options for individual title that are compatible with the underlying titles, be they native title or Aboriginal freehold or some other title.

Further, the paper explains:

> *Of the people who live in remote Australia, around one quarter reside on community-title land, primarily in northern and central areas of Australia. While there are a number of different Indigenous community-title systems in*

operation across Australia, the typical features of each system are that:

- *title to the land is vested in an entity such as an Indigenous trust or corporation;*
- *the entity holds the land on behalf of a group (eg Indigenous traditional owners); and*
- *the entity is generally not allowed to dispose of its interest in the land (ie, it cannot sell the land outright) and may otherwise deal with the land (eg, mortgage or lease the land) only with the consent of traditional owners.*

…

The restrictions involved with dealing with community-title land, particularly disposal and transfer restrictions, have meant that individuals are unable to own their home outright and cannot satisfy security requirements for lending organisations.

But it also goes on to admit that

State and Territory Governments have not invested in surveying most remote Indigenous settlements, and individual plots or parcels generally do not exist. Frequently, communities have experienced little or no town

planning, including the sort of preparatory survey work that is required to develop land subdivisions.

Jude Wallace, Senior Research Fellow in Geomatics at the University of Melbourne and a lawyer with international research experience in social tenure problems in several countries has characterised our plight at the crossroads in a much more informed and intelligent way:

The modern approach to land reform no longer sees the world as dichotomous tenure types of private and social tenures (public land and no access land are not in contention). Indeed, modern analysis stresses the commonalities between these two tenures, rather than their differences. Building commonality by drawing the tenures together through legal formalization is behind comprehensive recognition of land rights for indigenous people in the successful democracies. … Recently, legal protection of social tenures was offered in some post-colonial Asia Pacific region (APR) countries (Asian Development Bank 2002; Xanthaki 2003). Formalizations in the APR are historically late, different in form from African precursors and have more in common with Australia in that

they generally concern minorities in remote land of marginal value.

The engagement of indigenous people in determining their own destiny is axiomatic. Modern land administration theory does not assume that land tenure change will drive behavioural change. Titling for indigenous peoples is social, political, legal and practical. The political disenfranchisement of indigenous people throughout the world has been partially addressed by changes in international law (Anaya 2004). Anaya's table of principal international documents supporting indigenous peoples (2004: 367–71), and especially the UN draft Declaration on the Rights of Indigenous Peoples, highlight self-determination as a foundational principle. The self determination principle has another fundamental, pragmatic and theoretical support. The principle of subsidiarity, an underlying philosophy of political and administrative organization applicable in land administration and other areas (the most well known, in the organization of the European Union), requires that power over and management of problems should lie as close as

possible to the problem source. People on the land therefore need to be engaged in determining their future relationship with their land. Formalized systems, however, like unformalized social tenures, suffer from the same issue – how to make them sufficiently flexible so that they can adapt in response to changes in the world at large and the community in particular

In the midst of this policy imbroglio, native title parties of which there are now hundreds must consider the impact of the resource super profits tax on the projects for which they have provided land access and the social license to operate under the indigenous land use agreements. It has been reported in the media (SMH May 19, 2010) that Treasury head Ken Henry has said that 'Aboriginal Australians would have a special claim over the money raised by the proposed resource tax.' Asked in Sydney whether the revenue from the tax should flow to Australia's original inhabitants, he replied that the country's natural resources belonged to all Australians "including people not yet born". He said, if your question is, is there a case for some amount at least of that income … going to support indigenous

development, I would say very firmly yes, absolutely yes." It was further reported of his comments that,

> *Dr Henry rejected talk of a compromise over the size of the tax, saying to give in on the threshold would overcompensate miners. His comment came as Labor's leader in Western Australia, Eric Ripper, joined other state leaders urging changes to the contentious tax.*
>
> *His idea on supporting indigenous development is not government policy but was yesterday given a cautious welcome by Indigenous Affairs Minister Jenny Macklin, who said the proposed tax would boost mining and thereby benefit indigenous communities as native title holders.*

I am the first to admit, in response to some of the friendly economists commenting on some of my recent work, that I have played fast and loose with economic concepts such as 'rent-seeking,' the 'resource curse' and so on. But as you can see, we win a little, and then it is taken back off us by nefarious government means. Yes, it is true that when governments tax, that is there right to collect income. This is not rent-seeking. But when they come back again and again like vultures picking over our bones, in a social or sociological sense, they are rent-seeking

from the hard won benefits – the inherent rights and ancient property of the first Australians. In the current issue of *Griffith REVIEW*, Edition 28: *Still the Lucky Country?* my essay, entitled 'The resource curse: New outback principalities and the paradox of plenty,' I address the strange forms that this necrophilia takes in remote Australia, where State Governments collect resource royalties and underdevelop the very same regions from where the royalties are derived. This results in highly localised 'resource curse'–like impacts on the local populations in the mining provinces.

I agree that there should be a mature debate on the federal government's proposal. Yet, it is evident that while there may be great long term benefits for all Australians if a government resource super profit tax were invested in superannuation, there would also be unintended negative impacts of policy-on-the-run.

In developing countries, the concept of the natural resource account is analogous to the Australian government's proposal for investing resource wealth in superannuation. Such natural wealth accounts – a good example is the one established by the Timor Leste Government – are regarded as best practice and designed to avoid 'resource curse' impacts and to secure a proportion of

the profits from extracting mineral resources to enhance their living standards and to secure a worthwhile lifestyle for future generations. This is indeed one of the principal purposes of the Aboriginal trusts that receive native title payments.

In the last week, the federal Government's announcement of a resource super profit tax poses particular problems for us. The most concerning issue is the impact on those indigenous people who have settled Indigenous Land Use Agreements over mining projects, those who are presently negotiating with resource companies and those who are yet to negotiate their interests, all of whom may lose out badly if the super profit tax on future projects significantly reduces the revenue-sharing benefits to indigenous parties to those agreements. Even if these are written off under the resource super profit tax policy as transaction costs, they will be reduced or nullified if the projects are unsustainable. Many of them are already marginal because of commodity prices, debt structures, rising costs of labour and other factors.

The suggestion has already been made—and it is implicit in the Henry Review, I believe, that the Rudd government could provide

mining companies with a 100% exemption for all the costs of negotiated settlements with Aboriginal people, all the costs of Aboriginal employment and training in the mining industry and the establishment of viable Aboriginal institutions. In addition, part of the proceeds from the proposed Super Profits Resource Tax ought to be allocated to the very regions and communal lands where the wealth was generated. While this would be the most intelligent policy response for a number of reasons, and accelerate Aboriginal employment, it would not by itself solve the fundamental problem.

Where Aboriginal people have agreed to mining projects in formal settlements, such as Native Title Indigenous Land Use Agreements, we find that in some cases a remarkable change has occurred in the socioeconomic circumstances of the local Aboriginal populations. Rio Tinto Ltd, for instance, employs a large workforce; 8 per cent of its workforce is indigenous. This is around 1400 Aboriginal people in mainstream jobs. Ten years ago, Aboriginal employment in the industry was minimal. The change in the proportion of Aboriginal employees in the company is a radical change, not just to the ethnic makeup of the workforce, but to the culture of the workplace itself. This has

come about through the process of negotiating settlements with Aboriginal people that recognise their attachment to land, their ongoing cultures and their socioeconomic circumstances. This new culture in Rio Tinto Ltd, and increasingly in other companies, has ended the historical practice of marginalising Aboriginal people and treating us as an 'obstacle to development.' Further, it has become clear, that the workers who stay the longest are the Aboriginal employees, and this is precisely because of the attachment to country. This makes the investment in Aboriginal training and employment readiness worthwhile as a financial investment. In comparison, the remainder of the workforce is far more mobile.

There is much at stake in these many policy papers issued in the last month—the indigenous economic future depends on finding the right policy settings. Understanding the nature of native title, principally as a property right, and the burden it imposes on the Crown which has taken so much from us, is the first challenge for those who wish to impose more bureaucratic, unfruitful, surveillance regimes. I am pessimistic that in the present pre-election rush to appear to be addressing our economic development, the right policy settings will be found,

and even more pessimistic about the justice of these proposed measures. How will they lead to economic development and participation for indigenous Australians? The ideas about this are poorly conceived and circumscribed by a regime of surveillance and by many misunderstandings about the nature of native title, and the distinctions to be made between native title compensation, native title payments and other types of payments which are often bundled together in the financial settlements in a small proportion of the hundreds of agreements negotiated since the inception of the Native Title Act.

I thank Lisa Strelein and the Native Title Research Unit staff, several colleagues, including Maureen Tehan, Brian Wyatt and Simon Nish, the Australian Institute of Aboriginal and Torres Strait Islander Studies and especially you for listening to me. It has been an honour to deliver this Mabo Lecture.