

## **MABO ORATION COMMENTARY**

### **The Playhouse, Qld Performing Arts Centre, 15 June 2007**

May I acknowledge the traditional owners of the land on which we meet tonight on the southern banks of the Brisbane River to listen to the Mabo Oration, pay my respects to the elders and the Mabo family and thank Albert Holt for his warm and generous welcome to country.

Professor Larissa Behrendt commenced by reminding us that Eddie Mabo has left an extraordinary legacy. Part of that magnificent legacy is this series of orations named for him and celebrated for the second time this year, 15 years after the High Court decision which recognised the continuing existence of native title in Australia. And what a challenging and wise oration has been given to us tonight by Professor Behrendt.

First and foremost, what she reminds us of is the imperative need in this country to recognise that what makes Australia different from the rest of the world is the history and cultural identity, past and present, of its original inhabitants. Nowhere in the rest of the world are there people who have lived self-sufficiently inhabiting the whole of one continent for so many tens of thousands of years. Nowhere else on earth do we find a culture with the dreaming of the many Aboriginal peoples within Australia and the stories of the Tagai of the Torres Strait Islander people. Nowhere else in the world do we find visual arts as strong, vibrant and spiritual as found in the Indigenous peoples of Australia. Nowhere else in the world is found the kinship, the language, the song, the dance and the deep understanding and custodianship of this country.

This is our heritage as a nation and it reflects the best in our contemporary Australian culture. This has come about because the Aboriginal people of Australia have been unstinting in their generosity towards the newcomer, the invader and the settler. They have shared their wisdom.

And what has the response been? It has ranged from frank incomprehension and hostility to glimmers of understanding and occasionally, insufficiently, deep appreciation. Yet every time incremental progress is made, such as with the Mabo decision or with the Bringing Them Home Report, more incremental losses occur.

We must do better. As Larissa says the fate of Aboriginal and non-Aboriginal Australians are inextricably tied. The loss of human rights, fairness and justice to one, diminishes us all. In *Gerhardy v Brown* (1985) 158 CLR 70 the High Court was called upon to decide whether or not s 19 of the *Pitjantjatjara Land Rights Act* was invalid, in that people who were not Pitjantjatjara were required to obtain a permit or written permission to enter Pitjantjatjara country. It was argued that this was in breach of the *Racial Discrimination Act*, and akin to apartheid. Justice Brennan, who later wrote the leading judgment in *Mabo*, compared the difference between land rights and apartheid to the difference between a home and a prison. He said at [37] “land rights are capable of ensuring that a people exercise and enjoy equally with others their human rights and fundamental freedoms.”

Professor Behrendt also compared the response of prominent sections of the Australian media to the situation in which farmers have found themselves following long years of drought, and those same media outlets’ less sympathetic response to

Aboriginal dispossession. In her analysis, only for farmers is being forced to walk off your land a tragedy. One of the brilliant moments in *The Castle*, which Professor Behrendt mentioned in this context, is where the father Daniel Kerrigan suddenly realises that the eviction he is confronting, and his consequent feelings of outrage, are identical to the response Aboriginal people must have felt for 200 years and more. I happened to mention this to Justice Brennan when I ran into him at a recent event. “Have you seen *The Castle*?” I asked, not sure if a former Chief Justice was aware of such goings on in popular culture. “Only about three times”, he replied.

As Professor Behrendt observed, the Mabo judgment came at a time of change in the wider Australian community in its attitude to Aboriginal culture and rights. That change can be seen both in judgments of the highest courts in the land and in the most popular feature film ever devised and made in this country. Her powerful oration has thrown down a challenge to keep the momentum going; to ensure that if Australia is to thrive and to become the nation it can and should be, then we must all ensure that we move forward together as a people exercising and enjoying equally with others our human rights and fundamental freedoms.