

***Mabo* Screening with Rachel Perkins**

University of Johannesburg

19 April 2017

Welcome and let me add my thanks to all of you for attending today's screening of the film, *Mabo*. My name is Ben Playle and I'm the Australian Deputy High Commissioner to South Africa.

I'm particularly grateful to our partners here at the University of Johannesburg for hosting us today: Professor Ade Adebajo of the Institute for Pan-African Thought and Conversation; Dr Rookaya Bawa of the Library; and Professor Phyllis Dannhauser of the Department of Journalism, Film and Television. Many thanks to you and your staff.

Above and beyond even our hosts, allow me to thank our special guest, Ms Rachel Perkins, for accepting the Australian High Commission's invitation to visit South Africa for the first time. It's a great pleasure to have you in town for a few days.

As I'm sure you've already experienced, the legacy of apartheid continues to cast a long shadow across South Africa, including in relation to the issue of land. The forced movement of particularly black South Africans during the apartheid era has given rise to calls for redistribution of land, including calls from some for the expropriation of land without compensation. Those calls are rarely far from the surface of South African politics, and sometimes, as recently, make controversial headlines.

The issue of land is also at the centre of the film directed by Rachel that we've just seen. Rachel has spent the past 25 years telling the stories of Indigenous Australians, our Aboriginal and Torres Strait Islander peoples, through film. Her work has helped Australian audiences from all walks of life better understand and interpret both our history, and the relationship between Indigenous and non-indigenous Australians, warts and all.

When it comes to the warts, we have to be honest that there have been some shameful moments in the treatment of Indigenous Australians by non-indigenous Australians, and that plenty of warts remain today, despite the best efforts of successive governments and communities alike to ensure reconciliation. Rachel and others like her have played an invaluable role in holding a mirror up to our society.

Today, Aboriginal and Torres Strait Islander peoples comprise just three per cent of Australia's population. Yet, together, their cultures constitute the oldest living cultural history in the world, dating back at least 50,000 years, and possibly as far back as 65,000 years. They are a source of pride for all Australians.

In *Mabo*, Rachel found a particularly remarkable story to tell; that of a humble man, Eddie Mabo, whose name became synonymous with a decade long legal battle. As we've seen, that legal battle culminated in a landmark judgment by the High Court of Australia, our equivalent of the Constitutional Court, that granted land rights, known as native title, to Indigenous Australians. The Court delivered its judgment on 3 June 1992, just months after Eddie Mabo sadly passed.

I won't attempt to explain the cultural significance of the judgment handed down by the High Court. We are honoured to have someone with us in Rachel who is far better qualified than me to do so. I will instead make a more modest attempt to explain its legal significance.

While I'm currently masquerading as a diplomat, I'm a lawyer by profession. I studied law at the University of Western Australia in Perth from 1995 to 2000 in the immediate wake of the *Mabo* judgment, and watched as my professors sought, with varying degrees of success, to grapple with its profound and evolving impact on Australian property law. Never had the grey suited world of property law been more exciting, nor more important to the greater project of improving our democracy.

When European colonisers arrived in Australia in the 18th century, they relied upon the legal doctrine of *terra nullius*, a Latin phrase literally meaning 'land belonging to no-one', to grant themselves all land rights. The *Mabo* judgment abolished the doctrine in Australian law, recognising that the land had, in fact, been owned by Indigenous Australians all along.

While the *Mabo* judgment was rightly greeted with elation by Indigenous and many non-indigenous Australians, it was greeted with alarm by some. The State of Western Australia may only have a fraction of the population of the Province of Gauteng in which we meet today, but it shares its mineral wealth. It wasn't long before mining executives gathered in boardrooms up and down St George's Terrace in Perth were asking whether native title would prevent new mines

from opening? Nor was it long before some in the leafy suburbs of Perth and others cities across Australia were asking if Aboriginal people would now be free to set-up tents in their backyards?

Funnily enough, none of that eventuated. Instead, there was a remarkable period of law reform that, step-by-step, reconciled this new concept of native title with other land rights. That began with the *Native Title Act*, passed by our national Parliament in 1993, some 18 months after the judgment. The Act sets out the processes for Aboriginal and Torres Strait Islander peoples to claim both traditional land rights, and compensation for their denial. The period of law reform continued with a series of landmark judgments by the High Court and the Federal Court. Just to confuse everyone, our Federal Court is the rough equivalent of the High Court here.

Some 25 years after the *Mabo* judgment, Australia now has a sophisticated system for recognising native title that seeks to balance the traditional land rights of Aboriginal and Torres Strait Islander peoples, with the land rights of others acquired more recently.

As part of this balancing act, the rights that attach to native title can vary. They may include rights of possession, occupation, cultural use and enjoyment of traditional 'country'. They may also include participation in decisions concerning how land or water is used by others. Native title may stand alone, exist alongside, or, in some case, be extinguished by other land rights. Native title cannot be bought or sold, and can only be transferred by traditional law or custom, or surrendered to government.

When it comes to the mining sector, the fears expressed in boardrooms about native title preventing the opening of new mines proved unfounded. But mining companies must now, quite rightly, negotiate with Indigenous Australians about the use of land that is subject to native title, and provide compensation for any damage caused. And the only Aboriginal people setting up tents in the suburban backyards of non-indigenous Australians are those invited round for a kids' sleepover.

The recognition of native title in Australia remains complex, and the balance between native title and other land rights will continue to be refined, certainly by the courts and possibly by Parliament. But the recognition of native title, Eddie Mabo's legacy, will never be undone.

The issue of land is but one that goes to the broader project of reconciliation between Indigenous and non-indigenous Australians. As the Australian Government, as the Australian nation, and perhaps most importantly as individual Australians, we all still have a way to go to deliver social justice, to correct past wrongs, and to follow through on the buzz phrase of 'reducing the gap' between Indigenous and non-indigenous Australians. Indigenous Australians still lag behind in health and educational outcomes, life expectancy, incarceration rates, and broader social disadvantage.

Australia has committed to advancing human rights for indigenous peoples around the globe as part of our campaign for the UN Human Rights Council for the 2018-20 term, but we openly acknowledge this work starts at home.

I suspect that many of the themes raised in *Mabo* are familiar to our South African friends in the audience. Indeed, it was for this very reason that we were eager to invite Rachel to visit South Africa, and to share some of her work with you.

I'm obliged to end with a shameless plug. If you would like to see more of Rachel's work, together with films by other prominent Indigenous Australians, please attend the 'storylines' film festival being held at the Bioscope Theatre in Maboneng this weekend on 22 and 23 April. There are free public screenings at 3.00, 5.00 and 7.00 pm each day. You can find a program and reserve seats online at www.thebioscope.co.za.

Thank you.

Running order

14h00	Arrival and registration
14h30 – 16h20	<i>Mabo</i> screens
16h30	Panel discussion starts
	Introduction by Prof Adebajo
	Deputy High Commissioner Ben Playle speaks (+/- 5 mins)
	Discussion commences: UJ Film School Director, Professor Dannhauser 'interviews Rachel' on the movie, her directing process.
17h30	Event ends