



AUSTRALIA

**UNITED NATIONS WORKING GROUP ON
INDIGENOUS POPULATIONS
13TH SESSION
24-28 JULY 1995**

**STATEMENT ON BEHALF OF
THE HON. ROBERT TICKNER, MP
FEDERAL MINISTER FOR ABORIGINAL AND
TORRES STRAIT ISLANDER AFFAIRS**

ITEM 5: REVIEW OF DEVELOPMENTS

GENEVA

26 JULY 1995

CHECK AGAINST DELIVERY

Madame Chairman, Distinguished Members of the Working Group, Indigenous Peoples and Your Representatives, Representatives of Member States and of the United Nations Agencies, and all who are attending this thirteenth session of the Working Group on Indigenous Populations.

I am honoured on behalf of the Minister for Aboriginal and Torres Strait Islander Affairs to present the Australian Government's report on developments in indigenous affairs in Australia since the 12th session of the Working Group last year.

Introduction

It is no secret that Australia's international reputation for good human rights practice is most adversely affected by the record of our treatment of our indigenous peoples.

The Australian Government is committed to ensuring compliance with all the international human rights treaties that Australia has ratified. This is to promote the achievement of social justice for indigenous Australians and to consolidate and strengthen Australia's international credibility on matters relating to human rights.

Australia faces considerable human rights challenges in rectifying the serious disadvantage faced by Aboriginal and Torres Strait Islander peoples.

On every economic and social indicator, Aboriginal and Torres Strait Islander peoples are still the most disadvantaged groups in Australia.

The major underlying factor contributing to indigenous Australians' disadvantage can be found in the legacy of history, and the impact of two centuries of dispossession, dispersal and discrimination, involving the denial of fundamental rights.

At the core of the current disadvantage is the dispossession of most of their lands and waterways and their subsequent exclusion, until relatively recently, from mainstream society and its economic benefits.

The lack of access to social and political power has contributed significantly to the poverty and welfare dependence of indigenous peoples. The causes of disadvantage must be understood before they can be eliminated. Their elimination must remain a national priority. It must be stressed that indigenous disadvantage cannot be addressed meaningfully until all Governments, particularly State and Territory Governments, meet their responsibilities.

The 1991 Report of the Royal Commission into Aboriginal Deaths in Custody in its recommendations, focused on the "underlying causes" of deaths in custody. A central theme was the need to support self-determination of indigenous peoples and to address the profound disadvantage which they experience in all the important aspects of social life — in employment, education, health status, housing and related services, and support for youth.

Furthermore, an analysis of the most recent Census and other statistical indicators reveals the following key features:

- the indigenous unemployment rate was 2.8 times the national average and would have been much higher without the impact of the Community Development Employment Program (CDEP) on official statistics;
- much of the growth in Aboriginal and Torres Strait Islander employment has been due to the expansion of the Community Development Employment Program (CDEP) which is based on people voluntarily substituting employment for unemployment entitlements;
- long-term unemployment and under-employment remain very much higher than for other Australians (60 per cent of indigenous unemployment is long-term compared to 45 per cent in the wider community);
- average indigenous incomes remain at around only three-fifths of the average for other Australians;
- Aboriginal and Torres Strait Islander involvement in education beyond compulsory schooling years, while increasing, is still far below national levels;
- health remains a major area of concern, with most of the available indicators — life expectancy up to twenty years below national figures, high incidence of diseases and rates of hospitalisation, and so on — showing little sign of significant improvement in comparison to the overall population;
- unfilled demand for housing and community amenities and services of even the most modest standards remains unacceptably high;
- nearly 1 in 4 indigenous households with dependants are headed by one adult (of whom 86 per cent are women) compared with 1 in 12 for non-indigenous Australians;
- 27 per cent of indigenous households live in after-housing poverty compared to 12 per cent of the wider community;
- aged indigenous peoples face particular problems in accessing appropriate services; and
- Aboriginal and Torres Strait Islander peoples continue to be grossly over-represented among incarcerated Australians with no significant decline in the rate of deaths in custody.

In addressing these disadvantages, the Government has maintained its commitment to Aboriginal and Torres Strait Islander peoples by increasing its budget allocation for programs specifically for indigenous Australians.

The Social Justice Initiative

The Government acknowledges that achieving social justice for indigenous Australians means that the wide-ranging social and economic disadvantage experienced by indigenous peoples must be redressed.

Over the past two years, the Government has established a framework which will enable it to address, in partnership with indigenous Australians, the fundamental issue of Aboriginal dispossession.

In December 1993, the *Native Title Act* was passed to enable Aboriginal and Torres Strait Islander communities to assert their traditional rights to land where those rights have not been extinguished by past Government action.

In June 1995, the Government established the Indigenous Land Fund which will enable the purchase and management of land by indigenous communities which are now unable to assert their native title.

The third major component of the Commonwealth Government's response to the recognition of native title rights is the continuing development of the social justice initiative.

The aim of this initiative is to break down structural and institutional barriers to the full participation of indigenous peoples in Australian society and to protect their rich cultural heritage.

Reports on proposed social justice initiatives from the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Council for Aboriginal Reconciliation were presented to the Commonwealth Government in early 1995. Reports from the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Dodson and a number of Land Councils and other organisations have also been received by the Government.

In its report, the Council for Aboriginal Reconciliation dealt with matters relating to the two principal issues of the High Court's decision in the Mabo case: the effect of colonisation on indigenous relationships to the land and sea and the subordination of indigenous peoples to a structure of governance to which they did not assent.

Recommendations concerning constitutional issues, indigenous participation in the structures of Government and devolved empowerment through regionalised arrangements are particularly significant.

It was pointed out by indigenous peoples in the course of consultations on the social justice initiative that **there can be no reconciliation without social justice.**

For example, the Council sees *a vision of social justice for Aboriginal and Torres Strait Islander peoples based on a society that empowers indigenous individuals, communities and organisations to control their own destinies. This empowerment must be based on a new relationship between Aboriginal and Torres Strait Islander peoples and the wider*

Australian community. A new relationship is needed to break the cycle of dispossession and disadvantage. This cycle and the maintenance of a process of ongoing political and social subordination currently act as a barrier to better relations.

The Council's report *Going Forward* provides a comprehensive examination of measures that need to be addressed in any social justice package, and gives suggestions for their implementation. Some of the measures examined are:

- the development of a document of reconciliation including changes to the Constitution to formalise the position of Aboriginal and Torres Strait Islander peoples as the first people of Australia;
- dedicated seats in Parliament for Aboriginal and Torres Strait Islander peoples;
- establishment of an indigenous Bill of Rights;
- compensation for indigenous dispossession;
- the concept of Regional Agreements to enable Aboriginal and Torres Strait Islander peoples to have greater control over the design, operation or funding of services being provided to them — in fact greater autonomy for indigenous peoples; and
- recognition of the indigenous flags.

The Minister is pleased to announce that the proclamation of the Aboriginal flag and the Torres Strait Islander flag came into effect on 14 July this year, recognising them as the flags of the Aboriginal peoples of Australia and the Torres Strait Islander peoples of Australia and flags of significance to the Australian nation generally.

As stated in the report of the Council for Aboriginal Reconciliation: "if Australia can get the social justice package right, it would actually lead the world in the way it has handled indigenous rights."

ATSIC's report *Recognition, Rights and Reform*, has also called upon the Commonwealth Government to make a commitment to implement all elements of the social justice initiative by the year 2001, which is the centenary of Australian federation.

ATSIC's report outlines a series of "Principles for Indigenous Social Justice" and 113 other recommendations on constitutional reform, services, culture and economic development.

Recognition, Rights and Reform made important recommendations around six major themes:

- the rights of Aboriginal and Torres Strait Islander peoples as citizens;
- recognition of their special status and rights as indigenous Australians and the achievement of greater self-determination for Aboriginal and Torres Strait Islander peoples;

- ensuring that indigenous Australians are able to exercise their rights and share equitably in the provision of Government programs and services;
- the protection of the cultural integrity and heritage of indigenous Australians; and
- measures to increase Aboriginal and Torres Strait Islander participation in Australia's economic life.

The report recommends that Governments agree to legislate a broad set of "*Principles for Indigenous Social Justice and the Development of Relations between the Commonwealth Government and Aboriginal and Torres Strait Islander peoples*".

Adoption of such a charter would:

- underpin the further development and implementation of the specific proposals put forward in the report;
- guide all future relationships between the Commonwealth and indigenous peoples; and
- be capable of applying to roles and responsibilities of other spheres of Government as well.

These reports are platforms which can be used to negotiate acceptable and practical outcomes.

Many of the issues raised will require further examination and ongoing consultation with Aboriginal and Torres Strait Islander communities.

The Federal Government has provided significant funds to advance work in relation to the social justice proposals of ATSIC and the Council for Aboriginal Reconciliation. It does not see the social justice reports as leading to a few one-off responses or a package of measures, but rather to an ongoing process of negotiated reform with varying time scales.

Now is the time for action — it is time to narrow the gap between aspiration and reality, between good intentions and results.

Native Title

The *Native Title Act 1993* is a groundbreaking legislative response by the Commonwealth Government of Australia to the historic decision of the High Court of Australia in the Mabo case of June 1992 which resulted in native title rights being recognised as part of the common law of Australia.

In overturning the legal fiction that Australia was *terra nullius* in 1788 the court recognised:

that a prior system of rights existed based on indigenous custom and law ("native title rights"); and

that these rights continued to exist in the case of the Meriam people in the Torres Strait and may continue to exist in other parts of Australia unless extinguished by a plain and clear intention to extinguish them.

Apart from its practical effects, the Mabo judgement also has great political and symbolic importance. It has given all Aboriginal and Torres Strait Islander peoples — the victims of much of Australia's history since 1788 — a measure of dignity and justice, and once again made land rights an important national issue. It has set a new agenda for debate on relations between indigenous and non-indigenous Australians.

To protect the newly-recognised native title rights of indigenous Australians, while providing certainty over other kinds of land tenure in Australia the Commonwealth Government, after extensive consultation with indigenous peoples and industry representatives, developed and enacted the *Native Title Act* which came into effect on 1 January 1994.

The Government works closely with ATSIC, the peak national elected Aboriginal and Torres Strait Islander organisation, in implementing the Act.

Under the Act, representative Aboriginal and Torres Strait Islander bodies are responsible for assisting people to make native title claims.

The Minister for Aboriginal and Torres Strait Islander Affairs determines representative bodies after receiving advice from ATSIC.

At present there are twenty-one representative bodies covering most of mainland Australia, and all Aboriginal and Torres Strait Islander peoples will, eventually, have access to a representative body in their area.

Also under the Act, any native title interests found to exist will be held in trust by "prescribed bodies corporate" for the people determined as having those interests.

The National Native Title Tribunal was set up under the *Native Title Act* and has been operating since January 1994.

The role of the Tribunal is to mediate between claimants and respondents in native title claims and arrive at a mutual agreement.

If the Tribunal *cannot* achieve a mediated agreement between parties the matter is referred to the Federal Court.

Applications to the Tribunal can take the form of:

- claimant applications from people who claim to hold native title rights;

- non-claimant applications from people who have a legal interest in land or water;
- applications for compensation for loss of native title rights; and
- applications for revision of a native title determination.

At 21 July 1995, the Tribunal had received a total of 89 claimant applications. Mediation of one application covering an area of land in Wellington, New South Wales, is close to agreement in principle. The new Government of New South Wales is reviewing its predecessor's refusal to sign the agreement and is expected to sign up shortly.

By the same date the Tribunal had received 62 non-claimant applications and three applications for compensation.

Native Title Actions in Australian Courts

In 1994 the State Government of Western Australia challenged the validity of the Commonwealth Government's *Native Title Act* in the High Court of Australia. The full bench of the High Court heard the case and in March 1995 unanimously upheld the Commonwealth's legislation.

The High Court found that Western Australia's own native title legislation was inconsistent with the Commonwealth *Native Title Act* and with the Commonwealth *Racial Discrimination Act 1975* and was therefore invalid.

The Wik Peoples of Cape York Peninsula, Queensland, are waiting for a decision from the Federal Court of Australia in their case against the Queensland Government and mining company giant Comalco. The Wik are attempting to prove their native title rights to a large area of the peninsula which includes land held under mining leases, pastoral leases and some offshore waters. In exploring the existence of native title rights over pastoral leases and waters, the case is testing major points of law.

It is likely that the Federal Court will hear a number of native title cases during the coming year as cases are appealed or referred to it by the National Native Title Tribunal.

All States and Territories, except Western Australia, passed and proclaimed validating legislation by 31 December 1994.

Queensland, South Australia and New South Wales have also passed, but not proclaimed, legislation intended to establish complementary native title arrangements.

Victoria, Tasmania and the Australian Capital Territory do not intend to develop complementary arrangements at this stage.

The *Native Title Act* is only a beginning. Native title rights will be explored and developed by Aboriginal and Torres Strait Islander peoples, courts, tribunals, Governments and legislatures so, at this time, it is difficult to outline precisely what

rights and access to resources will follow from future determinations of native title. The following is a guide only.

The Act does not affect rights held under Commonwealth land rights such as the *Aboriginal Land Rights (Northern Territory) Act 1976*. Governments can confirm:

- existing ownership of natural resources by the Crown;
- existing rights to use of water by the Crown;
- existing fishing rights; and
- existing access to beaches and public places.

However, this confirmation will not extinguish or impair any native title rights and interests.

The *Native Title Act* allows native title holders to carry on activities involving the exercise or enjoyment of native title rights and interests in relation to land or waters.

Activities may include:

- (a) hunting;
- (b) fishing;
- (c) gathering;
- (d) cultural or spiritual activity; and
- (e) other prescribed native title rights-based activities.

The law allows native title holders to gain access to land or waters:

- (a) for the purpose of satisfying their personal, domestic or non-commercial communal needs; and
- (b) in exercise or enjoyment of their native title rights and interests.

In the case of all future acts, native title holders are entitled to the same procedural rights as holders of ordinary title, such as the right to be notified and to object.

The *Native Title Act* ensures that registered native title holders and registered native title claimants have a right to negotiate before certain permissible future acts happen. The right to negotiate applies to acts to do with mining, the compulsory acquisition of native title to make a grant to a third party and any other acts approved by the Commonwealth Minister. The right to negotiate is not a “veto” or right to reject.

The *Native Title Act* allows for the negotiated extinguishment of native title rights in return for regionalised agreements between native title holders and other interest groups. The extent of this application of regional agreements has yet to be fully investigated. For example, regional agreements based on the extinguishment of native title may involve native title holders exchanging their native title rights for involvement in natural resource

management regimes. Indigenous Australians may consider other national and international models of regional agreements in developing their own models.

Land Fund

In June this year the Aboriginal and Torres Strait Islander Land Fund and the Indigenous Land Corporation came into being as a result of actions by the Australian Government.

The land fund will provide a source of on-going funding to assist indigenous peoples from across Australia to buy and manage land. The land fund will initially be funded by a fixed annual allocation from the Commonwealth Government. A portion of this money will be invested to build the capital base of the land fund.

The Indigenous Land Corporation will administer the other portion which will be used for land acquisitions and land management.

After ten years Government allocations will cease and the Indigenous Land Corporation will continue to fund land acquisition and land management using the interest earned by the land fund.

Virtually every study and report into Aboriginal and Torres Strait Islander affairs in Australia has emphasised the central and over-riding importance of land to the social, economic and spiritual well-being of indigenous peoples.

The *Native Title Act 1993* was in many ways a symbolic act — it gave protection to those indigenous peoples whose rights to land have not been extinguished.

The majority of indigenous peoples will be unable to assert native title. The rationale behind the establishment of the land fund and the Indigenous Land Corporation was to help these people acquire land and manage it in a way that provides social, cultural and environmental and economic benefits. They offer indigenous communities the opportunity to reclaim some of their cultural heritage by regaining control over land.

They also go some way towards dealing with the problems created for Aboriginal and Torres Strait Islander peoples following the dispossession of their lands.

Reconciliation

In 1991, a process of reconciliation was established with the unanimous support of the Federal Parliament and a Council for Aboriginal Reconciliation was formed to promote reconciliation in the decade leading up to the centenary of Federation in 2001.

Since its inception, the Council has made significant progress in progressing the process of reconciliation. During the Council's first three years, reconciliation has developed from a little understood concept to the "overriding issue" identified in national consultations by the Federal Government's Centenary of Federation Advisory Committee as necessary for a truly national celebration of the centenary of federation.

The Council's first three-year term ended late last year with a new Council being appointed on 1 January 1995 for a further three years.

At the end of its first term, the Council presented a report to the Federal Parliament which highlighted how much has been done in local communities to further the reconciliation process over the last three years. However, the Council's report does point out that there is still much to be achieved, particularly in addressing the disadvantage affecting indigenous Australians.

The Council, in its report, identifies a range of key areas where its efforts, and those of the community should be focussed over the next three years. These areas include schools and young people, the legal system and the environment. In particular, Australians must begin to consider whether reconciliation should be enshrined in some sort of national document and, if so, what form it should take. A major sector which the Council identifies as requiring urgent attention is the building of greater links between the reconciliation process and State, Territory and local governments.

Despite the achievements of the past three years, there remain many challenges to be met by Governments, the wider community and Aboriginal and Torres Strait Islander peoples if indigenous and non-indigenous Australians are to join together as equals next century.

The new Council for Aboriginal Reconciliation will have a critically important role in raising public awareness of the need for Australia to address social justice issues, to recognise the rights of indigenous Australians and to work towards a just and equitable future.

The main tasks of the Council will continue to be:

- promote a deeper understanding by all Australians of the history, cultures, past dispossession and continuing disadvantage of Aboriginal and Torres Strait Islander peoples, and the need to address that disadvantage;
- provide a forum for discussion by all Australians of issues relating to reconciliation and of policies to be adopted by governments at all levels;
- consult Aboriginal and Torres Strait Islander peoples and the wider community on whether reconciliation would be advanced by a formal document of reconciliation; and
- report on community views as to whether such a document would benefit the Australian community as a whole, and if so, to make recommendations on the nature and content of, and manner of effect to, such a document.

Reconciliation is now entering a critical phase and the success or failure of the process over the remainder of the decade will substantially determine both Australia's standing in the eyes of the world and our own maturity as a country as we celebrate the centenary of our nationhood in 2001.

Heritage Protection

This has been a disappointing year for the administration of the Commonwealth's *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. Two declarations made by the Minister under this Act have been successfully challenged in the courts on the basis of a denial of natural justice to some parties.

In February this year, the Federal Court set aside a declaration made by the Minister under the Act to protect an area of land near Broome in Western Australia acting on the basis of an independent report on the matter by a former Western Australian Liberal Senator and Federal Minister, the Hon. Fred Chaney.

Last year the Minister advised this forum that he had issued a declaration for a 25 year period to prevent the construction of a bridge to Hindmarsh (Kumarangk) Island in South Australia. The Minister acted on the basis of an independent report prepared by Professor Cheryl Saunders which led him to conclude that the area was of particular significance to Ngarrindjeri women.

However, the Federal Court decided to quash the Minister's declaration made last year on the basis of procedural defects. The Court's finding has been challenged and a decision of the full Federal Court concerning this appeal is expected shortly.

Unfortunately, the spiritual beliefs of the Ngarrindjeri women at the centre of the Hindmarsh Island bridge issue have been under considerable attack in recent months.

There have been allegations seeking to undermine the legitimacy of the spiritual beliefs of the Ngarrindjeri women. Media reports have suggested that these spiritual beliefs have been fabricated.

In response the Minister has announced a further independent inquiry to be conducted under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. However, at the same time, the South Australian Government has commenced a Royal Commission into the allegations of fabrication. The validity of the Royal Commission is being challenged by the South Australian Aboriginal Legal Rights Movement on the basis of contravention of the *Racial Discrimination Act* and the International Covenant for the Elimination of Racial Discrimination.

One most positive development in the area of heritage protection during the year has involved the Strehlow collection of Aboriginal sacred objects.

The Strehlow collection is undoubtedly the best known collection of Aboriginal sacred objects in Australia. They are of great significance to Central Australian Aboriginal cultural heritage and spirituality.

The action of the Commonwealth in issuing a heritage protection declaration over the objects has ensured that this priceless collection of Aboriginal objects has been returned to Aboriginal ownership and control.

Royal Commission Monitoring

The 1993/94 report on the Commonwealth Government's response to the Royal Commission into Aboriginal Deaths in Custody confirms that a sustained and integrated effort will continue to be necessary to achieve the outcomes identified by the Royal Commission for Aboriginal and Torres Strait Islander peoples.

It is of grave concern that the rates of incarceration of Aboriginal and Torres Strait Islander peoples have, indeed, increased, and deaths in custody continue to occur. Furthermore, the over-representation of indigenous peoples in the criminal justice system is, alarmingly, 26 times higher than that of non-indigenous Australians.

It is an unfortunate fact that Aboriginal and Torres Strait Islander peoples are being imprisoned still for trivial and minor offences such as public drunkenness, resisting arrest and the use of abusive language.

Amnesty International has renewed its call for justice for indigenous Australians, and criticised Australia for its continuing high incidence of Aboriginal deaths in custody. Although Amnesty's findings were not unexpected, it should be remembered that two-thirds of the recommendations of the Royal Commission into Aboriginal Deaths in Custody related to matters in the jurisdiction of the States and Territories.

Thus, it is critically important to keep up pressure on Australia's States and Territories to implement the recommendations of the Royal Commission and to provide the basic services for which they have responsibility.

The Minister continues to press for regular meetings of Commonwealth, State and Territory Ministers to establish a detailed overview of the implementation. The Australian Police Ministers' Council, conferences of Ministers for Corrections and the Standing Committee of Attorney-General, among others, have sought reports on some key recommendations and issues. The Minister looks forward to an expanded scope for this kind of overview at the highest levels, particularly in having standing agenda items.

The Commonwealth Attorney-General, Michael Lavarch, has recently written to his State and Territory colleagues expressing concern at the limited outcomes from implementation of the Royal Commission's recommendations and seeking stronger efforts to monitor responses.

Indigenous peoples and communities have faced the challenge of tackling the underlying issues identified by the Royal Commission and many hundreds of community organisations throughout Australia are contributing daily to the effort necessary to meet these needs.

Their role is crucial, both in services provision and also, in the wider community, in advocacy and in education of the local populations. Their dimension of self-determination is a most important one.

Governments must make a sustained commitment which reflects the urgency of indigenous needs, particularly in areas where the non-indigenous population has long enjoyed high standards. That is the challenge to Governments.

Each Government in Australia — Commonwealth, State and Territory — is committed to annual reporting on implementation. It is essential that, beyond the reporting of action taken, the outcomes of those efforts are scrutinised and judged. All Governments must ensure through transparent reporting that there is adequate information available to demonstrate that they have applied principles of access and equity in the allocation of resources.

In the Minister's statement to this forum last year he indicated that the Commonwealth Government's first annual report on implementation of Government responses to the Royal Commission into Aboriginal Deaths in Custody was being referred to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. This did in fact occur and the recommendations of that Committee, in a report entitled *Justice Under Scrutiny* are currently under consideration.

The Committee, in its investigations, attempted to speak to as many Aboriginal and Torres Strait Islander peoples and organisations as possible, and chose to concentrate on those recommendations which addressed the broad issues involved in the diversion from custody.

This included areas such as imprisonment as a last resort, Aboriginal-police relations, juvenile justice and recognition of customary law.

The Committee emphasised that the involvement of Aboriginal and Torres Strait Islander peoples was critical to the successful implementation and monitoring of recommendations. Concern was expressed that the previous implementation reports have glossed over deficiencies and not accurately portrayed the implementation process. Delays in reporting on implementation and the need for greater accountability by State and Territory Governments were also causes for concern.

The Aboriginal and Torres Strait Islander Social Justice Commissioner in his 1994 State of the Nation Report also focussed on the report *Justice Under Scrutiny*.

Possible responses to the report of the Standing Committee may involve, amongst others, the following strategies:

- development of effective network strategies with ATSIC Regional Councils, community organisations and the Aboriginal Justice Advisory Committees;
- developing a closer working relationship with the office of the Aboriginal and Torres Strait Islander Social Justice Commissioner; and
- commissioning independent research on key areas such as:
 - the development of a Royal Commission into Aboriginal Deaths in Custody Research Register;
 - reducing the number of Aboriginal and Torres Strait Islander peoples in custody;

- employment outcomes for Aboriginal and Torres Strait Islander peoples.

The Federal Government's Justice Statement

The Federal Government's recently released *Justice Statement* contained a number of measures to improve access and equity for Aboriginal and Torres Strait Islander peoples across various aspects of the legal system. Provision has been made in the 1995-96 Budget for all of these social justice proposals.

The Minister is pleased to advise that a major component of the *Justice Statement* was the announcement of an inquiry into the past practice of the removal of Aboriginal and Torres Strait Islander children from their families.

The Inquiry will be headed by the President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, and is required to report to the Government no later than December 1996.

When announcing the Inquiry the Minister reminded the nation that more than 10 per cent of Aboriginal peoples over 25 years of age had been separated from their natural families and that 43 of the 99 deaths in custody investigated by the Royal Commission into Aboriginal Deaths in Custody were of people who had experienced childhood separation.

The Government believes it is necessary to examine the laws, practices and policies which resulted in the compulsory removal of indigenous children from their families. The Inquiry will also consider the adequacy of current laws, practices and policies especially relating to services and procedures available to those people affected and advise on any changes required.

The Government and the Human Rights and Equal Opportunity Commission also recognise the need to involve Aboriginal and Torres Strait Islander peoples in the planning process for the Inquiry, and an indigenous advisory body will assist the Commission for the duration of the Inquiry.

The *Justice Statement* also provides for additional funding to the Aboriginal and Torres Strait Islander Social Justice Commissioner to allow for improved independent monitoring of social justice and human rights for Aboriginal and Torres Strait Islander peoples.

Other measures of specific benefit for Aboriginal and Torres Strait Islander peoples include reforms to the legal system to increase access and equity in the delivery of legal aid.

Customary Law

Another field of particular concern to indigenous Australians is customary law. In 1986 the Australian Law Reform Commission completed a detailed report on Aboriginal

customary law which represented the culmination of years of field trips, academic research, and public hearings.

The question examined by the Commission was whether it would be desirable for the general legal system to apply either in whole or in part Aboriginal customary law to Aboriginal peoples, and, if so, whether it should be applied generally or in particular areas or to people living in tribal conditions only.

The position of Aboriginal people as the indigenous peoples of Australia and the grave injustices they have suffered under the legal system gave special weight to their claim for recognition of customary law. The Commission concluded that there were special reasons justifying the application of customary laws to Aboriginal peoples. These reasons arose from the special situation of Aboriginal peoples in Australia, from the disadvantages and injustices flowing from non-recognition of their laws and from the special importance they attached to their laws. In general the Commission considered that care should be taken to preserve rights under the general law and that the best remedy for particular problems might be to make changes of general application.

To a large extent, customary law is about the beliefs and practices of Aboriginal peoples. Some of these beliefs and practices are a form of intellectual property which could not be codified or integrated into the system of general law.

What is urgently needed is that customary laws be taken into account wherever relevant, to the fullest extent to which they do not conflict with international human rights standards.

To this end an Interdepartmental Committee has been set up to examine how the result may be best achieved. The preliminary stages have involved an examination of the extent to which the law has already incorporated customary law into the general law, including those areas in which adaptation is no longer required, and analysis of those aspects of customary law which can now be readily incorporated as well as of the problems which may be faced in endeavouring to incorporate certain aspects of customary law into the general law.

Many of the recommendations of the Commission are the subject of State or Territory jurisdiction rather than Commonwealth jurisdiction. For example, to give full recognition to traditional marriages for all the purposes envisaged by the Commission, several jurisdictions will have to amend their laws.

The IDC intends to utilise the Standing Committee of Attorneys-General in order to progress towards the achievement of those legislative changes which will be needed to implement the recommendations of the Commission. The matter has already been raised at a meeting of that Committee last year and an officers' report has recently been presented for its consideration.

It is intended that the Interdepartmental Committee will promote popular and cross-Party support for the issues surrounding the recognition of customary laws. It is hoped that this support will be obtained by means of a thorough ongoing public debate in which

groups and individuals will be reassured that Australia's international obligations under the various Conventions and Covenants will be met.

Cultural Property Rights

Effective intellectual property protection for Aboriginal and Torres Strait Islander peoples is vital for Australia as part of the continuing process of addressing the particular needs and special interests of Aboriginal and Torres Strait Islander peoples.

In the past, aspects of Aboriginal and Torres Strait Islander cultural expression have not always been adequately protected by the law. This has led to unacceptable exploitation of indigenous works.

The current *Copyright Act* fails to recognise the communal nature of ownership in Aboriginal culture and the fact that many indigenous creators express themselves in a non-material form, such as dance.

An important part of the Government's consideration of this issue is feedback from Aboriginal and Torres Strait Islander peoples, including experiences of unauthorised use of their cultural work and their views on what is required to properly protect their unique culture.

The Government released an issues paper in October 1994 to provide the community, but particularly Aboriginal and Torres Strait Islander peoples, with an opportunity to comment on this important area. Responses received will assist the Government to develop options for reform.

The Government is deeply committed to overcoming these deficiencies through legislation to provide the strong protection Aboriginal and Torres Strait Islander cultural expression so clearly deserves.

Self-Government Issues

In the context of this address today a special reference should be made to the indigenous peoples of the Torres Strait.

Since time immemorial, the Torres Strait Islander peoples have occupied a beautiful and distinct geographical region of Australia. The Torres Strait lies off the far northern tip of the State of Queensland. It separates Australia from Papua New Guinea, and extends from the Arafura Sea in the west, to the Coral Sea in the east. Torres Strait Islander peoples share ethnic, linguistic, cultural and traditional bonds, and their customs and practices are unique against those of other Australians.

At the 1991 Census 26,902 Australians identified themselves as Torres Strait Islander peoples. An estimated 21,000 of these people live outside the Torres Strait area within mainland Australia, particularly the large urban areas of Queensland. Some 6,000 remain in the Torres Strait itself. It was here, in the heart of the Torres Strait Islands, that

recognition of pre-colonial occupation by Australia's indigenous population was won in the High Court of Australia.

Torres Strait Islander peoples have a close affinity with the sea, and a strong dependence on marine resources for food as well as economic development. A stable marine ecology supported by sound environmental and conservation management regimes are therefore vital. The Torres Strait also contains the main shipping channels via northern Australia including heavy tanker traffic.

Last year this region was the scene of another major development in indigenous affairs, with the establishment on 1 July 1994 of the Torres Strait Regional Authority (TSRA). The Authority, comprising 20 elected members, provides a means of concentrating within their own territory, the key decision making processes affecting the Islanders' social, legal, political and environmental rights. The TSRA is a statutory body of the Commonwealth, and is legislatively empowered to develop policy, formulate and implement programs, monitor program delivery, develop long-term planning proposals and support the economic needs of the region and its people.

Central to the aspirations of Torres Strait Islander peoples is the achievement of a form of territorial self-Government within the sovereign jurisdiction of the Australian nation. The Authority is pursuing, in collaboration with the Australian Government, the best achievable process for delivering self-government within the next five years under a mutually acceptable system.

The Council for Aboriginal Reconciliation, in reporting to the Prime Minister of Australia in March 1995 on measures to advance the cause of social justice for Aboriginal and Torres Strait Islander peoples, made special reference to regional self-Government in the Torres Strait. The Council recommended that a commitment be given to an enhanced form of self-Government and that a special negotiating group be established to examine mechanisms to enhance the powers of the Torres Strait Regional Authority as a basis for seeking to establish self-Government by the year 2001. Consideration is currently being given to the constitution of this negotiating group to carry forward the concept.

As has already been explained, the majority of the Torres Strait Islander population reside outside the Torres Strait. Under the ATSIC Act a Torres Strait Islander Advisory Board has been set up to represent all Torres Strait Islanders. The Board provides advice to the Minister for Aboriginal and Torres Strait Islander Affairs for the purpose of furthering the social, economic and cultural advancement of Torres Strait Islander peoples, with particular emphasis on the needs of those residing outside the Torres Strait.

The Torres Strait Regional Authority in the Torres Strait and the Torres Strait Islander Advisory Board recognise the "oneness" of Torres Strait Islander peoples and have ensured links are maintained with Torres Strait Islander peoples living outside the Torres Strait. The ATSIC Commissioner for the Torres Strait zone is also Chairperson of the Torres Strait Islander Advisory Board.

Aboriginal Councils and Associations Act

In 1976, in recognition of the special needs of Aboriginal and Torres Strait Islander peoples, the *Aboriginal Councils and Associations Act* was introduced.

Important issues in the introduction of the Act were that Aboriginal law had no equivalent of an incorporated body and that the notion of incorporation had no precedence in Aboriginal culture. Incorporation of Aboriginal organisations was therefore to reflect their culture.

The Act was intended to provide a simple, flexible and inexpensive means for Aboriginal and Torres Strait Islander groups to incorporate for any lawful purpose.

Since 1976, many significant developments have taken place in indigenous affairs in Australia — such as the increasing empowerment of Aboriginal and Torres Strait Islander peoples, enabling them to make decisions according to their own priorities and to manage their own lives, the recognition of native title, the expansion of Commonwealth programs for Aboriginal and Torres Strait Islander peoples, and the substantial growth in the number of indigenous organisations.

A comprehensive and sensitive review of the Act is timely. The Minister has called for such a review.

The review process will support the Aboriginal and Torres Strait Islander Commission's vision of empowerment for indigenous Australians. To this end, Aboriginal and Torres Strait Islander peoples will take an active role in the review process through consultation regarding the type of legislation that would now best suit their needs.

The review of the Act is intended to identify any special Aboriginal and Torres Strait Islander needs for incorporated status not currently provided for by the Act and make recommendations as to how the Act could more effectively meet the incorporation needs of Aboriginal and Torres Strait Islander communities.

There has recently been a renewal of interest in the potential of Part III of the Act to meet the growing movement for developing and implementing self-Government concepts for indigenous communities. The review will examine the relative merits of existing State and Territory legislation and Part III of the Act in meeting Aboriginal and Torres Strait Islander aspirations for forms of local or regional governance.

Access and Equity

In 1992 an extensive evaluation of the Commonwealth's Access and Equity Strategy was undertaken by the Office of Multicultural Affairs in the Department of the Prime Minister and Cabinet. This evaluation highlighted the need for effective consultation with Aboriginal and Torres Strait Islander organisations, the need for programs to be delivered through Aboriginal and Torres Strait Islander organisations where appropriate; and the need for cross-cultural training for the staff of Government agencies.

In December 1992, the Council of Australian Governments endorsed the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal peoples and Torres Strait Islanders*.

Through this action all Governments agreed to ensure that Aboriginal and Torres Strait Islander peoples receive the same level of service as other Australians, and that addressing indigenous disadvantage is a joint responsibility of Governments.

There still remains a great need for a concerted effort particularly from State, Territory and local Governments to give effect to the principles of access and equity. As has been stressed previously, all Governments need to meet their responsibilities if there is to be any improvement in the position of Aboriginal and Torres Strait Islander peoples within Australian society.

Indigenous Health, Housing and Infrastructure

During the year there have been major changes in the administration of indigenous health.

The National Aboriginal Health Strategy (NAHS), developed in 1989, was the first serious attempt to address the problems impacting on the health of Aboriginal and Torres Strait Islander peoples. An evaluation of the Strategy was carried out in 1994. The NAHS Evaluation Committee reported its findings to the Chairperson of ATSIC, the Minister for Aboriginal and Torres Strait Islander Affairs and the Minister for Health in December 1994. The Report's major findings were that:

- the NAHS was never effectively implemented;
- all Governments have grossly underfunded NAHS initiatives in remote and rural areas if the objective of environmental health equity by the year 2001 is to be attained;
- ATSIC has been a convenient scapegoat for inaction and the failure of Governments to deliver improved outcomes; and
- if the Commonwealth wants to achieve environmental health equity by the year 2001, there will need to be substantial increases in funding for housing and essential services in remote and rural regions in Australia, including the Torres Strait, over the remainder of the decade.

Following the tabling of the NAHS Evaluation report, the Commonwealth reviewed funding in the 1995-96 Budget and determined that the indigenous health and substance abuse programs then administered by ATSIC would be transferred to the Department of Human Services and Health from 1 July 1995. A Memorandum of Understanding to clarify the ongoing respective roles and responsibilities of ATSIC and the Department of Human Services and Health is to be developed.

The Department of Human Services and Health is intending to commission a comprehensive needs analysis and review of Aboriginal Health Services funded in 1995-96.

In 1994-95 approximately 90 per cent of the ATSIC health component budget of \$88.752 million was allocated to the continuing operation of Aboriginal and Torres Strait Islander Health Services (AHSs). The Component funded 342 projects including some 96 AHSs. These AHSs provide a range of primary health care services including referral and liaison services for Aboriginal and Torres Strait Islander peoples needing mainstream or specialist services. They employ various combinations of doctors, nurses, Aboriginal health workers, dentists and allied health professionals. Many operate several separate health projects to cover such activities as dental programs, trachoma and eye health programs, women's health programs and environmental health projects.

In 1994-95 the Commonwealth Government, through the Joint Health Planning Committee, allocated \$25.1 million to NAHS health projects. These funds were used for a wide variety of projects such as establishing a limited number of Aboriginal Health Services, capital works, support for strategic and planning work directed at improving decision making, and innovative pilot projects.

The issue of deaths in custody was referred to earlier in this paper. It has been found that the number of Aboriginal deaths in prison and police custody more than doubled last financial year, from six deaths in 1992-93 to 14 in 1993-94. Of the 11 indigenous deaths in prisons in 1993-94, eight resulted from heart conditions and the remaining three were due to other illnesses.

This reflects a pattern since 1980 in which disease was responsible for almost half of Aboriginal deaths in custody, while for non-Aboriginal peoples, disease accounted for less than one third of deaths in custody.

Further, the level of Aboriginal and Torres Strait Islander mortality is about 2 to 3 times that of the total Australian population, and life expectancy is about 16 to 18 years less than that of other Australians. Similar findings have been made by other researchers. Indigenous Australians continue to have one of the worst rates of life expectancy in the world.

On the positive side, the Australian Institute of Health and Welfare has reported that:

- the age-standard death rates from cardiovascular disease declined by 19% among Aboriginal males;
- death from lung cancer is declining among Aboriginal men, though not among Aboriginal women;
- alcohol related deaths are declining;
- deaths from car accidents declined by 27% for men;
- deaths from homicide declined by 50% for men;

- the number of deaths from pneumonia has remained stable for men and women; and
- the infant mortality rate continues to decline, but the rate of decline has slowed.

The provision of housing and essential services should be accompanied by strategies for improved maintenance of facilities and appropriate education, including health services and promotion, to equip individuals to achieve a lifestyle and level of economic stability which permits healthy choices.

Some idea of the enormous extent of unmet need can be obtained from ATSIC's survey of housing and community infrastructure needs. The first stage of the survey was completed in 1992 and found that, in discrete communities and other rural and remote areas:

- around 44,000 Aboriginal and Torres Strait Islander persons live in such overcrowded conditions that they require additional housing;
- about 40 per cent of the houses required major repair or replacement; and
- of the discrete communities, one third had a water supply which did not meet national standards for human consumption; 13 per cent did not have a regular water supply; and around two-thirds had less than 50 per cent of internal or access roads sealed.

In this year's Federal Budget, ATSIC received additional funding for housing and infrastructure — some \$80 million over four years — in recognition of its vital importance within the context of indigenous health.

The Commission is also developing and funding an innovative national program — Health Infrastructure Priority Projects — to provide the housing and infrastructure needs of targeted communities.

Employment

The unemployment rates in Aboriginal and Torres Strait Islander communities are at three times the level of those of the wider Australian community. At least 120,000 jobs have to be created for indigenous Australians to achieve employment equity by the year 2000.

If it were not for the CDEP — Community Development Employment Projects — and ATSIC funding of over 1,500 indigenous community organisations, the situation today would be far worse. 26,000 indigenous peoples forego their social security payments and work for their community under CDEP.

In May 1994, the Government announced its *Working Nation* initiative which is designed to work toward the goal of securing jobs and getting the unemployed back to work.

Working Nation contains specific measures to address unemployment among indigenous peoples.

Additional resources have been given to a number of programs aimed at providing Aboriginal and Torres Strait Islander peoples with jobs. In addition, under mainstream labour market programs, there will be an 18 per cent increase in the number of program places for Aboriginal and Torres Strait Islander peoples.

The Federal Government has set in train measures to monitor the outcomes of the *Working Nation* initiative including its specific impact on Aboriginal and Torres Strait Islander unemployment.

Education

In January 1993, the Minister announced a National Review of Education for Aboriginal and Torres Strait Islander peoples. The review was established to examine the effectiveness of strategies developed during the first three years of the Government's Aboriginal and Torres Strait Islander Education Policy, the outcomes achieved, the extent of unmet need and the development of future strategies.

The findings of the Review were presented to the Federal Government earlier this year. The Review found that while the educational experiences of Aboriginal and Torres Strait Islander peoples have improved over the last five years, in terms of participation in and delivery of education services, Aboriginal and Torres Strait Islander peoples continue to be the most educationally disadvantaged groups in Australia.

The Review made a number of recommendations to improve the outcomes of the National Aboriginal and Torres Strait Islander Education Policy which Federal, State and Territory Governments are currently considering.

The Government has held bilateral discussions with State and Territory Governments seeking to improve indigenous education outcomes as outlined in the Review with a focus on establishing service delivery standards and outcome performance measures. The response of State and Territory Governments has generally been positive with commitments to increase their efforts in this area.

The Government will be responding fully to the National Review later this year.

Family, Sport & Recreation

Madame Chair, the eyes of the world will be on Australia in the year 2000 when the Olympic Games will be held in Sydney.

To Aboriginal and Torres Strait Islander peoples sport — and recreation — are intrinsically bound together. Culturally sport is an extension of recreation — and Aboriginal and Torres Strait Islander peoples, when given the chance, have excelled in sport.

At a community level, the importance of sport and recreation has been described by some observers as almost the social cement of many communities. However, indigenous peoples are still significantly unrepresented in many sports. The Australian Government has always believed that barriers to access and equity in all aspects of sport and recreation should be broken down.

To receive Commonwealth funding sports must now include strategies in their development plans to break down these barriers. It is also required that these organisations place their State counterparts under a similar obligation to comply.

Several sporting groups have already responded with positive documents outlining processes that initially involve reconciliation and dialogue, then the imposition of heavy fines if these processes are not adhered to.

Through Government initiatives to promote Aboriginal and Torres Strait Islander involvement in all levels of sport, it is hoped that Aboriginal or Torres Strait Islander champions will be amongst those athletes that represent Australia at the 2000 Olympics in the city of Sydney.

Conclusion

Madame Chair, a central objective of the Government's social justice strategy is the development of a fairer, more prosperous and just society for all Australians.

The Government has accepted, since the 1967 Referendum, special responsibility for Aboriginal and Torres Strait Islander peoples.

Furthermore, the Government recognises the relevance of international developments, including increasing recognition of the unique status of indigenous peoples and takes most seriously, Australia's obligations under international human rights instruments. Indigenous Australians must enjoy the full protection of these international covenants.

But, as stated at the beginning, it remains a sad fact that Australia's indigenous peoples suffer unacceptable levels of disadvantage. This tragic and shameful situation must be changed if social justice for indigenous Australians is to become a reality.

The Government recognises that indigenous peoples are seeking long term and lasting reform and strives for a vision of Australia in which social justice and full equality of treatment, free from racism enables indigenous Australians to exercise and enjoy the full benefits of life in this country.

Constitutional reform and recognition, regional self-Government and regional agreements, and the negotiation of a treaty or comparable document which addresses the issue of compensation, could be important elements of this new relationship.

The particular status of the nation's indigenous peoples as the prior owners of the land must be recognised, along with their rights to cultural, social and economic diversity.

Indigenous rights must be protected through such means as recognition of customary laws, protection of intellectual and cultural property, and recognition of what may be termed indigenous rights, possibly through a Bill of Rights or other enforceable means.

Most important of all is the right to self-determination: the right of indigenous peoples to decide within the broad context of Australian society the priorities and the directions of their own lives, and to freely determine their own affairs.

Indigenous self-Government is a self-determination option for some indigenous communities. There is a strong linkage between regional agreements, empowerment and regional planning. Many communities are now showing interest in strengthening localised responsibility, commitment and accountability.

Regional Agreements provide opportunities for regional empowerment. ATSIC provides a representative regional structure through which indigenous peoples could enter into agreements which would see Regional Councils evolving into bodies with additional powers and responsibilities.

This is what happened in the Torres Strait with the creation of the Torres Strait Regional Authority.

As the Aboriginal and Torres Strait Islander Commission noted in its report on Native Title Social Justice measures "*indigenous peoples have been too often betrayed, over the last two centuries, by fine words that have soon withered in the grim drought of inaction and indifference*".

As the new century approaches and as Australia approaches the centenary of its Federation, this is the right time to be reaching for a just and durable settlement with its indigenous peoples and to be seeking to attain the goal of reconciliation between indigenous and non-indigenous Australians.

2001 offers a political opportunity that the Government cannot ignore.

Thank you, Madame Chair.