

AGENDA ITEM 5 REVIEW OF DEVELOPMENTS

ELEVENTH MEETING OF THE WORKING GROUP ON  
INDIGENOUS POPULATIONS

19 - 30 JULY 1993 GENEVA

STATEMENT BY DANNY CHAPMAN

ON BEHALF OF THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL

WGIP 13/01/93. AUS/40

MADAM CHAIRMAN

1. THANK YOU FOR THE OPPORTUNITY TO SPEAK TODAY. I WOULD LIKE TO CONVEY THE GRATITUDE OF THE ABORIGINAL PEOPLE OF NEW SOUTH WALES TO YOU; TO THE OTHER DISTINGUISHED MEMBERS OF THE WORKING GROUP AND TO OUR BROTHERS AND SISTERS WHO ARE HERE REPRESENTING THEIR PEOPLES. THIS IS AN IMPORTANT PROCESS WHICH SEEKS AND ALLOWS INDIGENOUS PARTICIPATION AND WE ARE HONORED TO BE A PART OF IT.

2. MADAM CHAIRMAN, AS YOU ARE AWARE, LAST YEAR, THE HIGH COURT OF AUSTRALIA HANDED DOWN A DECISION WHICH REJECTED THE ABHORENT NOTION OF TERRA NULLIUS AND THAT NATIVE TITLE DID AND STILL DOES EXIST IN AUSTRALIA. DESPITE ITS DISTINCT LIMITATIONS BOTH IN ITS INTERPRETATION AND APPLICATION THE DECISION HAS CREATED MUCH CONTROVERSY AND HYSTERIA THROUGHOUT AUSTRALIA.

3. FOR THE ABORIGINAL PEOPLES OF NEW SOUTH WALES THE MABO DECISION HAS THE POTENTIAL TO BE FAR REACHING IN OUR REGION. ALTHOUGH THE PROSPECT OF HAVING LAND RETURNED UNDER MABO IS LIMITED THERE ARE CLEAR ADVANTAGES FOR NEW SOUTH WALES IN THE SECURING OF OUR TRADITIONAL HUNTING AND GATHERING RIGHTS. WHAT NEEDS TO BE STRESSED IS THAT THIS HIGH COURT DECISION IS NOT THE ULTIMATE LIBERATOR FOR ABORIGINES AND IS NOT THE END OF THE WORLD THAT THE MINING, PASTORAL AND VESTED INTERESTS ARE ESPOUSING.

4. SUCH REACTION IS NOT SURPRISING HOWEVER WHEN AFTER 10 YEARS OF OPERATION, PUBLIC COMMENT ABOUT THE NEW SOUTH WALES ABORIGINAL LAND RIGHTS ACT MIRRORS THE IGNORANCE AND HYSTERIA GENERATED ABOUT MABO. NOW IN ITS TENTH OPERATIVE YEAR, THE NEW SOUTH WALES LEGISLATION HAS IN REALITY PROVIDED A LAND BASE OF MINUSCULE PROPORTIONS DESPITE THE GOVERNMENT RHETORIC.

5. ABORIGINAL EXPECTATIONS WERE RAISED BY THE LEGISLATION'S PREAMBLE WHICH STATES IN PART

"..... IT IS ACCEPTED THAT AS A RESULT OF PAST GOVERNMENT DECISIONS THE AMOUNT OF LAND SET ASIDE FOR ABORIGINES HAS BEEN PROGRESSIVELY REDUCED WITHOUT COMPENSATION.....",

COUPLED WITH WORDS OF PROMISE FROM A FORMER ABORIGINAL AFFAIRS MINISTER WHO PROCLAIMED AND I QUOTE THAT:

".....VAST TRACKS OF CROWN LAND WILL BE AVAILABLE FOR CLAIM AND WILL GO SOME WAY TO REDRESS THE INJUSTICES OF DISPOSSESSION....."

END OF QUOTE.

6. THE LEGISLATION WAS IN PRINCIPLE LOOKING TO REDRESS OUR DISPOSSESSION, BUT WHEN INTRODUCED IT FAILED TO MAKE PROVISIONS FOR OWNERSHIP AND CONTROL OF OUR CULTURE AND HERITAGE. FURTHER LEGISLATION IS URGENTLY NEEDED TO TRANSFERE THE REGULATION OF OUR CULTURE AND HERITAGE TO ABORIGINAL CONTROL. PARTICULARLY IN THE AREAS OF SCARED AND SIGNIFICANT SITES AND THE RETURN OF HUMAN REMAINS.

7. DESPITE SUCH STRONG LANGUAGE FROM GOVERNMENT ON THE RETURN OF LANDS, CONTEMPORARY MEDIA HEADLINES SUCH AS "BLACKS LODGE HUGE LAND CLAIMS" DOES NOT PORTRAY A PRACTICAL ANALYSIS OF THE LEGISLATION'S IMPLEMENTATION. WITH MORE THAN 4500 LAND CLAIMS LODGED, 650 HAVE BEEN GRANTED, MORE THAN 2500 HAVE BEEN REFUSED AND 1400 REMAIN UNDETERMINED.

8. THE RESPONSIBLE MINISTER WHEN DETERMINING LAND CLAIMS, ASSESSES UNDER SECTION 36 OF THE NSW ABORIGINAL LAND RIGHTS ACT, WHETHER LAND IS:

- A) LAWFULLY USED OR OCCUPIED;
- B) IS NOT NEEDED OR LIKELY TO BE NEEDED FOR RESIDENTIAL PURPOSES AND;
- C) IS NOT NEEDED FOR AN ESSENTIAL PUBLIC PURPOSE.

THIS BROAD CRITERIA, WHICH QUALIFIES THE GRANTING OF CLAIMS, HAS BEEN MISUSED BY SUCCESSIVE GOVERNMENTS TO OBSTRUCT THE ORIGINAL INTENT OF THE LEGISLATION.

9. GOVERNMENT DEFENCE IN REFUSING LAND CLAIMS HAS INCLUDED OUTRAGEOUS AND MORALLY FARFICAL ARGUMENTS WHICH INCLUDES THE DESCRIPTION OF "ESSENTIAL PUBLIC PURPOSE", AS THE SCENIC VALUE OF A PARTICULAR PARCEL OF LAND. IN ONE LAND CLAIM THE GOVERNMENT ARGUED THAT THE LAND WAS NEEDED FOR AN ESSENTIAL PUBLIC PURPOSE BECAUSE OF THE SCENIC VALUE IT GAVE TO NON-INDIGENOUS PEOPLE, WHO WERE FORTUNATE ENOUGH TO BE WATER-SKIING ON THE ADJACENT WATERFRONT.

10. IN ADDITION, GOVERNMENT ARGUMENTS FOR REFUSAL ON THE BASIS OF "LAWFUL USE AND OCCUPATION" HAS INCLUDED THE DUMPING OF DISCARDED CAR BODIES AND THE PRESENCE OF LITTER ON THE LAND UNDER CLAIM.

11. ALTHOUGH THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL WAS ABLE TO SECURE TITLE IN THESE INSTANCES, THE SUCCESSES ARE DUE TO THE EXCESSIVE CONSUMPTION OF TIME, ENERGY AND FINANCIAL RESOURCES WHICH COULD HAVE BEEN BEST UTILISED ON SOCIO-ECONOMIC AND CULTURAL PROGRAMS.

12. IRONICALLY PROVISIONS FOR FINANCIAL COMPENSATION TO ASSIST WITH ECONOMIC SELF-SUFFICIENCY IS HINDERED BY THE NEED TO DIRECT RESOURCES TO THESE RECURRING ADMINISTRATIVE AND JUDICIAL PROCESSES.

13. THE LEGISLATIVE PROVISIONS FOR FINANCIAL COMPENSATION EXISTS FOR FIFTEEN YEARS. THE PROVISION ALLOWS ONLY FIVE MORE YEARS OF GOVERNMENT FIDUCIARY OBLIGATIONS. THE ABORIGINAL PEOPLE OF NEW SOUTH WALES ARE EXPECTED TO BECOME SELF-SUFFICIENT IN THAT TIME.

14. THE CHANCES OF ACHIEVING SELF SUFFICIENCY IN 15 YEARS, WHEN AFTER 205 YEARS OF ABJECT SOCIAL AND ECONOMIC CONDITIONS AND A CONTEMPORARY REALITY OF HAVING LITTLE IF ANY LAND, DERELICT HOUSING, POOR HEALTH, INADEQUATE EDUCATION AND MASSIVE UNEMPLOYMENT ALL INDICATE SLIM PROSPECTS FOR COMMUNITY DEVELOPMENT.

15. THE NEW SOUTH WALES EXPERIENCE IS MARKEDLY DIFFERENT FROM THAT OF OTHER INDIGENOUS PEOPLES AROUND AUSTRALIA - MANY OF WHOM DO NOT ENJOY STATE PROVISIONS FOR RETURN OF LANDS. IF THE GOVERNMENT USES THE MABO DECISION CORRECTLY IT COULD BE A FOUNDATION FOR THE DELIVERY OF JUSTICE TO ALL INDIGENOUS PEOPLES. AS IT RELATES TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL MABO SHOULD BE COMPLIMENTING THE ORIGINAL SPIRIT OF THE ACT, THAT WAS PROCLAIMED IN THE PREAMBLE.

16. NOW THE COMMONWEALTH GOVERNMENT HAS THE OPPORTUNITY IN ITS HANDS TO NEGOTIATE AND LEGISLATE A NATIONAL FOUNDATION WHICH RECOGNISES INDIGENOUS RIGHTS TO LAND THEREBY CREATING A SOCIETY THAT IS FAIR AND JUST.

17. MADAM CHAIRMAN A MORE COMPREHENSIVE ADDITION TO THIS INTERVENTION IS ANNEXED FOR THE INFORMATION OF THE WORKING GROUP, PARTICULARLY FOR REFERENCE BY THE SPECIAL RAPPORTEUR OF THE SUB-COMMISSION ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS PEOPLES.

THANK YOU MADAM CHAIRMAN.