AUSTRALIA

WORKING GROUP ON INDIGENOUS POPULATIONS

12TH SESSION

STATEMENT BY THE HON. ROBERT TICKNER, MP
FEDERAL MINISTER FOR
ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

ITEM 5: REVIEW OF DEVELOPMENTS

A more detailed version of this statement is attached.

Geneva
27 July 1994

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AUSTRALIAN PERMANENT MISSION
56, RUE DE MOILLEBEAU – 1211 GENEVA 19 – TELEPHONE 734 62 00

Madam Chairman, Distinguished Members of the Working Group, Indigenous Peoples and Your Representatives, Representatives of Governments, and all who are attending this Working Group.

It is my honour to present a report from the Government of Australia on developments over the past twelve months within my country concerning the human rights of Aboriginal and Torres Strait Islander peoples who are the indigenous peoples of Australia.

A more detailed version of this report will be produced and made available to participants in this forum.

Last year my report to the Working Group was delivered by the Chairperson of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Mr Garrie Gibson.

At my request Mr Gibson placed on the record of the United Nations the Government's commitment to give full force and effect to the Australian High Court's decision on the existence of an indigenous land title known as "native title". He recorded the unambiguous and unequivocal aspirations of the Government in responding to the High Court decision known as the Mabo case.

The Government acknowledged that the High Court's decision on native title, handed down on 3 June 1992, overturned the myth of *terra nullius* and accepted the Court's decision that Australia's common law recognises a form of native title which survived European settlement. As the Australian Prime Minister, Paul Keating, has continually stressed, the nation's response to the decision is of fundamental importance to Aboriginal and Torres Strait Islander peoples, and to the process of reconciliation between indigenous peoples and the wider community.

The Government is committed to the view that the Mabo decision presents the nation with a genuine basis for reconciliation and is, in the Government's view, a unique opportunity to achieve a lasting settlement with the indigenous peoples of Australia.

The Mabo decision goes to the core of the issue: dispossession. The High Court's recognition of native title has profound consequences not just for land management but for contemporary issues of social justice and the process of reconciliation.

As the Minister for Aboriginal and Torres Strait Islander Affairs within the Australian Government for the last four and a half years, it has been my objective to do all I can to make indigenous issues pivotal to the Australian national identity and to ensure that indigenous issues are at the forefront of the political consciousness of the nation. The reconciliation process was conceived as the philosophical and moral backdrop for reform and change in Australia in indigenous affairs over the remainder of this decade leading to the centenary of the formation of the Australian Federation in 2001.

When the history of the *Native Title Act* is finally recorded it will show, in my view, that the process of negotiation was as important as the final outcome. That process of negotiation put indigenous representatives head to head with the Prime Minister and led to a Draft Bill which was then further negotiated through the Senate, the Upper House of the Australian Parliament, to finally become law on 1 January 1994.

There is no doubt that, had the Government failed to deliver a just outcome on the native title legislation, the reconciliation process would have been damaged irrevocably. The outcome was applauded by many Aboriginal and Torres Strait Islanders and by a wide section of the Australian community.

There is, however, much more to be done to give effect to the Government's commitment to a nationally agreed and desirable settlement in response to the High Court's decision in the Mabo case.

I have always been deeply conscious that the High Court decision in the Mabo case would only directly benefit a relatively small number of Aboriginal and Torres Strait Islander peoples. That is, those who were still able to hold their land according to their customs and traditions and who had not been dispossessed.

The second stage of the Government's response to the High Court decision is the establishment, through legislation, of a national Aboriginal and Torres Strait Islander Land Fund. It is proposed that the Land Fund will benefit all indigenous peoples, including those who have been dispossessed. This legislation has already been introduced into the Australian Parliament and will be passed in the next session. The total amount of the allocations to the Fund is $1.463 billion allocated over a period of ten years. The Fund will be invested so as to accumulate a self-sustaining fund for the acquisition and management of both existing and newly acquired indigenous land.

In addition to the Land Fund, the Prime Minister has asked ATSIC and the Council for Aboriginal Reconciliation to prepare separate reports on ideas for a social justice package to

address the position of indigenous peoples by early 1995. The Aboriginal and Torres Strait Islander Social Justice Commissioner will also put forward his views on the package.

The three entities have published a discussion paper to generate public discussion on the social justice package and copies of the discussion paper are available for the information of the Working Group.

I believe that there is now a wide awareness in my country that Australia cannot celebrate its centenary of Australian nationhood in 2001 if the indigenous peoples of the country continue to be the poorest, sickest, least educated and most unemployed of all Australians. The social justice package presents Australia with what is likely to be the last chance this decade to put a policy framework in place to address the issues in the remainder of the Decade.

We are also aware that when the Olympics come to the City of Sydney in the year 2000 the eyes of the world will be on Australia. And because of Australia's stand on human rights internationally, we can expect no lesser standard to be applied to ourselves.

But, above all else, our national Government is acting on these issues because of our own national commitment to deliver justice on them. In 1967 the national Government of Australia gained the constitutional power to pass laws to advance the human rights of Aboriginal and Torres Strait Islander peoples as the result of a referendum passed by a record 92 per cent of the Australian people.

A key issue posed to the Government by indigenous peoples on the consultations on the social justice package is the extent to which the Commonwealth Parliament is prepared to give full force and effect to the constitutional power entrusted to it by the 1967 referendum to pass laws with respect to Aboriginal and Torres Strait Islander peoples. Whatever the outcome of the public debate on this question, it seems inevitable that the present inadequate level of commitment by State and Territory Governments to addressing indigenous human rights cannot continue.

The challenge for the national Government of Australia is to put the policy parameters in place to address effectively those human rights before the end of the century. Thus a great deal is riding on the effectiveness of the consultation process on the social justice package and the quality of the Government's response to the proposals advanced to us by indigenous peoples.

I have faith that my country will get it right both because of the commitment of our political leadership and because the Australian community is determined to address the quality of life

and human rights of Aboriginal and Torres Strait Islander peoples by the centenary of our nationhood in 2001.

The Australian Government will report to the next meeting of the Working Group on decisions taken by the Government early in 1995 on the social justice package.

Concurrently with the development of the social justice package of measures the Government is also embarking on a number of other initiatives which will bear upon issues associated with that social justice package and these initiatives are detailed in the more circulated version of my report.

During the course of last year there has been an extensive review of the legislation which established the Aboriginal and Torres Strait Islander Commission (ATSIC). For those at this forum who are not familiar with ATSIC, I should stress that its establishment was a major step towards self-determination for Aboriginal and Torres Strait Islander peoples.

In essence, it involves the transfer of the decision-making power of the Minister for Aboriginal and Torres Strait Islander Affairs to the elected representatives of indigenous peoples. It needs to be stressed that on a day-to-day basis I, as Minister, have only limited powers to issue "general" directions to ATSIC. These can then be challenged by the Parliament. Since the establishment of ATSIC on 5 March 1990 I have issued no such directions.

The Commonwealth has recently moved to further meet the self-determination aspirations of Torres Strait Islander peoples through the establishment of the Torres Strait Regional Authority.

Torres Strait Islanders were responsible for the achievement of the Mabo decision by bringing their claims to indigenous native title rights before the High Court of Australia. In the aftermath of that High Court decision the leadership of the Torres Strait Islanders made it clear to the Government that their aspirations were for an evolution to a form of self-government by the year 2001.

The Prime Minister has written to the Premier of the State of Queensland with a view to initiating preliminary discussions between governments and with Torres Strait Islanders to discuss these aspirations.

The establishment of the Torres Strait Regional Authority, on 1 July this year, means that decisions affecting indigenous peoples in the Torres Strait will no longer be made by ATSIC but by the elected representatives of Torres Strait Islanders in the Torres Strait.

The implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody remains, as it must, very high on the Government's agenda.

The framework for monitoring and accountability to which the Government committed itself has been established and goes far beyond what the Royal Commission recommended. The national Government has produced a report on the implementation of the Royal Commission recommendations and similar reports have been, or are, being produced by State and Territory Governments and tabled in the national Parliament. I have pleasure in producing a copy of the Commonwealth's first Annual Report for the information of the Working Group.

The Aboriginal and Torres Strait Islander Social Justice Commissioner, an independent office created by Commonwealth legislation at my instigation, will I hope scrutinize the performance of all governments in relation to the Royal Commission recommendations.

Some two thirds of the Royal Commission recommendations were directed towards State and Territory Governments which have direct responsibility for police, prisons, coronial inquiries and reforms to the criminal justice system.

The Commonwealth Government has committed itself to raise the implementation of the Royal Commission recommendations at all relevant Commonwealth/State Ministerial forums and to do all it can to persuade State and Territory Governments to act to give effect to the recommendations.

The reality is, however, that those criminal justice issues are, as the Royal Commission itself recognised, under the direct jurisdiction of State and Territory Governments.

Therefore, it becomes of supreme importance for initiatives to be taken which will secure State and Territory Government action on recommendations within their jurisdiction. This is also a question which will be given consideration by indigenous peoples in the context of the social justice package.

Another welcome initiative has been the formation of Deaths in Custody Watch Committees in a number of jurisdictions. The Committees comprise representatives of both indigenous and non-indigenous peoples, and play a key role in publicising the achievements and failures of governments in giving effect to the recommendations of the Royal Commission.

I have always maintained that if the reconciliation process is to be meaningful then the spiritual beliefs of indigenous peoples must be accorded no less respect than those of non-indigenous Australians.

Since the last meeting of the Working Group there have been three occasions where the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* has been used to protect Aboriginal heritage.

A declaration has been issued, with the support of the Northern Territory and South Australian Governments, to protect the Strehlow collection, a collection of sacred Aboriginal objects from Central Australia.

In April this year, I made a decision to issue a long-term declaration over an area of significance to Aboriginal people near Broome in Western Australia. This area is also the subject of a native title claim and was the site of a proposed extension of a crocodile farm, the development of which would have irreparably damaged Aboriginal cultural beliefs and practices in the area.

Earlier this month I issued a declaration for a 25 year period to prevent the construction of a bridge to Hindmarsh (Kumarangk) Island in South Australia near the lower reaches of the Murray River. On this occasion I acted on the basis of an independent report prepared for me by Professor Cheryl Saunders.

The report of Professor Saunders led me to conclude that the area is of particular significance to the Ngarrindjeri people, and details how the Ngarrindjeri women describe how "Hindmarsh and Mundoo Islands and waters surrounding them have a supreme spiritual and cultural significance for the Ngarrindjeri people within the knowledge of the Ngarrindjeri women which concerns the lifeforce itself".

At each meeting of the Working Group I have reported on the progress of the reconciliation process which continues to enjoy the unanimous support of the Australian Parliament. The reconciliation process has three objectives:

- firstly to promote a deeper understanding by all Australians of the history, cultures, past dispossession and continuing disadvantage of Aboriginal and Torres Strait Islander peoples and of the need to redress that disadvantage;

- secondly to foster a commitment from Governments at all levels to cooperate to address progressively Aboriginal and Torres Strait Islander disadvantage and aspirations in relation to land, housing, law and justice, cultural heritage, education, employment, health, infrastructure, economic development and other relevant matters; and

- thirdly to consult with Aboriginal and Torres Strait Islander peoples and the wider community on whether reconciliation would be advanced by a formal document, and to make recommendations on the nature and content of any such document.

A detailed progress report on the work of the Council for Aboriginal Reconciliation is contained in the written report I am circulating to the Working Group.

The Australian Government welcomes the continuing role of the Working Group on Indigenous Populations and appreciates the opportunity to report on progress on indigenous human rights issues over the course of the year.

Australia takes a strong stand on human rights issues around the world and, therefore, believes that all governments must be open and accountable for the human rights of their peoples.

The human rights of indigenous peoples are increasingly the focus of international scrutiny and the Australian Government stands ready to participate with indigenous peoples and the international community in a continuing dialogue on these indigenous human rights issues.

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