



AUSTRALIA

**Statement on behalf of the Australian Government
by**

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Affairs**

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Madame Chairman, Distinguished members of the working group, Representatives of member states and of the specialised agencies of the United Nations system, Indigenous peoples and their representatives and all attending this 17th session of the Working Group on Indigenous Populations.

This is the second time that I have had the privilege of taking the floor in this forum. I also attended the session in 1997.

May I begin by offering my warm congratulations to you, Madame Chairman, on your re-election to the chairmanship of this important working group. You first presided over this working group in 1984. Since then its meetings have grown in both size and status and the working group has completed many important tasks. I note, for example, that this week you have presented your second progress report on indigenous people's relationship to land and I look forward to reading it with interest.

Much of the success of WGIP can truly be said to be a direct result of your vision, Madame Chairman, to create a unique forum in the United Nations system where indigenous peoples may speak freely of their concerns and aspirations. Your words of constructive dialogue, freedom, human rights and equality encourage all of us.

Australia, through its government and NGO representatives, has a long and active record of involvement in the Working Group on Indigenous Populations and related UN fora. It is an indication of the importance we place on indigenous rights, and, on a practical level, the importance we place on addressing indigenous disadvantage.

We come here this year for a number of reasons, partly to learn from the experiences of others and partly to share the Australian experience with other participants. We believe that in recent times in Australia there has been a positive and fundamental shift in thinking about solutions to some of the most intractable problems confronting indigenous communities.

I want to spend some of my time today speaking about that change in approach, but first of all I want to address a few remarks to the main theme of this week's meeting – land and land usage.

Land and native title: Pre-Mabo

Two years ago when I was here the issue of land and native title featured prominently in public debate in Australia. It was even mentioned in some of the proceedings of this group.

I am pleased to report today that the domestic debate has now largely subsided, following the enactment of amended native title legislation by the federal Parliament last year.

Considering Australia's unique historical experience it should have come as no surprise that indigenous land issues would be a source of public debate at the end of the twentieth century. The reason is that eighteenth century British settlement of Australia proceeded on an entirely different legal basis to that in other parts of the world, North America and New Zealand, for example.

Unlike there, British colonization of Australia proceeded on the legal assumption, albeit factually and demonstrably wrong, that the continent was not settled - "terra nullius". With the result that, unlike other colonies, there were never any formal treaties or agreements made with the indigenous population.

As a consequence indigenous land rights were not acknowledged and did not evolve as part of Australian land and property law.

Of course indigenous Australians, quite rightly, never accepted this legal argument and from the 1960s began a series of political campaigns and court challenges to assert and establish their land rights.

From the early 1970s Australian governments – both federal and State – began to develop policy and legislative responses to accommodate these aspirations and needs.

A national program of land purchases for indigenous Australians began over a quarter of a century ago and continues to this day. Under the indigenous controlled Indigenous Land Corporation, A\$48 million is available every year for land purchase and management in perpetuity.

Legislation was enacted by both federal and state governments, transferring Crown land to indigenous ownership and control. This included most of the settlements and reserves on which many Aboriginal Australians lived as a result of past policies.

There are 390,000 Aboriginal and Torres Strait Islanders representing 2.1 per cent of the Australian population and today they own or control approximately 15 per cent of the Australian continent. That is an area equivalent to the size of France and Spain combined.

In many instances, such as the Northern Territory where 42 per cent of the land is Aboriginal owned, this includes the right to control any mining development on that land. For example, one of the largest undeveloped uranium ore bodies in the world is being developed on Aboriginal land at Jabiluka, following the original consent of the Aboriginal traditional owners.

Just two weeks ago the World Heritage Committee gave its endorsement to this development, which adjoins the World Heritage, listed Kakadu National Park. The equivalent of the mineral royalties that would normally flow to Government are being paid to Aboriginal people and are estimated at A\$210m over the course of the project.

Mabo and Wik: Native Title

Specific legislative schemes of vesting land in indigenous ownership and control pre-dated the Australian High Court's historic Mabo decision of 1992. In that case the court found that a common law property right of "native title" existed and had survived where indigenous people maintained traditional connection with the land. The exception was where governments had intentionally extinguished it by the grant of inconsistent property rights.

This decision represented a major challenge for Australian society, not least because it involved integrating a newly recognized form of property right into an established system of property law.

As a result of that 1992 decision it was assumed that native title might therefore exist on existing Aboriginal land and on the 25 per cent of Australia that remained vacant Crown or public land. In 1993 the federal government enacted the Native Title Act on that basis to give clarity and effect to the Mabo decision.

The Native Title question changed again in 1996 when the High Court brought down its controversial Wik decision. In effect, this decision extended the possible existence of common law native title to that large proportion of the continent that was effectively privately owned in the form of pastoral leases and similar titles.

Approximately four-fifths – 80% - of Australia became potentially subject to native title claim. The existing 1993 legislative framework that was designed to apply to Crown land and that therefore took no account of co-existing private property interests, was thrown into disarray.

There were competing claims, conflicting interests, anxiety and emotion on all sides. A delicate and complex compromise was needed. Following lengthy public and parliamentary debate, an amended Native Title Act was eventually enacted last year through the Australian Parliament. It's important to note that the Australian Senate, which is not controlled by the current Government, passed that legislation.

Australia is aware of course that earlier this year the CERD Committee was critical of some aspects of the 1998 legislation. In passing judgement on Australia's native title legislation, the Committee was dealing with complex domestic issues that had been the subject of lengthy and thorough political debate and legal processes in Australia.

The Committee had less than a day to come to grips with this sensitive domestic issue. The Australian Government was disappointed that the views of the Committee did not record the substance of the Government's submission and evidence on key issues reported on by the Committee. The Government has since provided comments to the Committee which seek to redress what it considers to be an unfortunate omission of relevant material from the Committee's report.

Australia's recent experience with the Committee has highlighted specific concerns about the way the UN treaty bodies consider sensitive and complex policy issues, many of which have required a delicate balancing of interests by the Government concerned. The Australian Government believes that the validity and relevance of the treaty bodies' views will suffer, as well as the credibility of the system as a whole, if there is a perception that committees are not able to respond effectively to such issues.

Australia has long recognised and supported the central role of the treaty bodies in elaborating and monitoring human rights standards. However, we share the broader concerns that the treaty body system as a whole is not functioning as effectively and as efficiently as it should. The Australian Government gives a high priority to treaty body reform. This is important in the interest of ensuring the long term sustainability and effectiveness of the human rights treaty body system and of ensuring that

the treaty bodies are able to fulfil their role in the UN human rights system as a whole.

Is land the answer?

Madam chair, I want now to address some wider indigenous issues, from the Australian perspective. We recognise of course that for cultural, historical and symbolic reasons, land is important to indigenous people.

It is possible however to expect too much from simply restoring land ownership. Land is not a panacea to the social and economic challenges facing indigenous communities.

We know, for example, that similar social problems persist throughout the indigenous community in Australia. It makes no difference whether it involves people whose land has been restored or people whose land was never taken or people who have been irrevocably alienated from their traditional country.

For example, the substance abuse and family violence rates in some Aboriginal regions of northern and remote Australia – irrespective of whether the area is Aboriginal owned or controlled - are truly horrific. In a recent editorial (“Indigenous gains need honest debate”) Australia’s national newspaper observed:

“Those who genuinely seek further progress for indigenous Australians must be prepared to acknowledge ... uncomfortable truths. They must even be prepared to debate the definition of progress and expand it to include not only the concepts of land rights and self-determination but also their practical benefits. Self-determination and land rights do not automatically deliver benefits, as the experience of many communities has starkly demonstrated: in many cases land rights have failed to improve basic facilities” (The Australian 27.4.99)

An Australian indigenous leader, Noel Pearson has said:

“the most important and powerful resource that an individual can have is education. Education is the resource which can most mobilize and empower an individual and a society”.

I agree completely. In a world where increasingly economic wealth and power are knowledge-based, it is the skills of people in which we must invest for the long-term future. That is what we are doing in Australia.

Let me give you a few basic statistics that clearly emphasise this approach.

In 1990 there were just 1,600 indigenous Australians attending university. Through a very active government program of support there are now almost 8,000.

Four years ago there was just 800 indigenous Australians learning trades through apprenticeships and the like. Today through active government participation there are 4,800.

The real issues

What then are the real issues? Until quite recently it was impossible in our country to have an honest debate about some of these issues. There was what I call “the great silence” at the core of much discussion of indigenous policy issues. We talked about the problems caused by history and society, but few dared speak of some of the fundamental problems nurtured within many indigenous communities themselves. One of my Ministerial predecessors refers to this as, quote:

“the double standard in the debate”. (Fred Chaney, Alan Missen Memorial Lecture 27.8.97)

That has now changed partly because of the recent intervention of one individual, an indigenous leader, Noel Pearson, who in the past has been a critic of governments. This year he publicly attacked welfare dependency within the indigenous community, describing welfare as “*a poison*”, the results of which, he said, were destroying family and community life. He said, and I quote:

“Welfare is a resource that is laced with poison and the poison present is the money-for-nothing principle”.

By “welfare” he meant those forms of financial support provided directly to able-bodied individuals for which no reciprocity is required – what he called “*money for nothing*”. This violates the essential link between rights and responsibilities. Until recently the emphasis has been on individual rights, to the effective exclusion of personal responsibility.

The result, Pearson says, has been a downward spiral of devastating social consequences. Again to quote him:

“Despite all the assaults on Aboriginal society, the poison of welfare may yet prove to be the most effective cause of the unravelling and ultimate destruction of Aboriginal society”.

The indigenous reaction to Noel Pearson’s comments were mixed. Interestingly, however, no one denied the truthfulness of his observations. Most merely questioned whether it was wise to speak out on this issue.

And there are others prepared to speak the plain truth. Referring to the alcohol abuse and violence so frequently associated with welfare dependency in many communities, one female indigenous leader, Boni Robertson said, (and I quote):

“We must all admit that something has gone desperately wrong”
(The Courier Mail 8.5.99).

And other leaders have spoken out. Jack Dann, a Ngarinyin Elder from the Kimberley area of Australia, in an address entitled “WORK IS SACRED: THE JOURNEY OUT OF WELFARE” said, and I quote:

“Socks up to the the knees people (government people) told us that the sit down money was our right when we knew in our heart that Land and Work was our right. The sweet lolly idea of sit down money and welfare services was really the biggest highway to a short life of rubbish food, gambling, and tobacco and alcohol abuse.”

I might add that not for a moment do I believe that the Australian experience is unique. A prominent member of the Australian High Court, Mr Justice Kirby, recently commenting on the new Canadian Territory, Nunavut said:

“As with the Australian indigenous people, so with the people of Nunavut, the handout mentality which has occurred in the last 30 years has really depressed the self-dignity and self-sufficiency of the people It’s just as important in Australia as it is in Nunavut to find an economic solution to that problem so that they can stand on their own two feet and can really play an active part not only in their own nations but in the world”. (The Canberra Times 2.4.99).

The handout mentality is closely associated with the debilitating perception of oneself as merely a victim. If we encourage people to see

themselves as victims, they absorb the passive and destructive mindset of victimhood. Again to quote Noel Pearson:

“It is time we analysed our condition as a people without being defeated and paralysed by the racial issues We have to stop being seen as victims. A victim implies a person is incapable of helping himself. Aboriginal leadership has seen it politically useful to portray our people as victims. It is a politically powerful position to carry an argument publicly. It is a very tricky business dealing with people who have been victims. But it is a terribly bad thing to perpetuate. The view that people are victims is very disempowering”. (The Courier Mail 1.5.99)

Until recently it was not possible – because of political correctness – to speak in such terms. At least now we are having an honest discussion of the issues. We are now able to talk about individual responsibility as well as systemic failure.

I am relieved and reassured to be able to say that this new candour in indigenous debate within Australia is not confined to one side of politics. A prominent member of the Opposition Labor Party, Mr. Mark Latham, recently said, and I quote:

“This is the tragedy of groups that, after a long period of disadvantage and defeat, start to see the world solely in terms of victimisation. They pursue a politics of symbolism and self-justification, rather than the real world of results. Legal rights become a substitute for personal responsibility. As they see it, the system is always at fault, never the individual.” (The Daily Telegraph, 7.5.99)

The current Australian Government takes the view in relation to its key social policies that government assistance will not work unless the beneficiaries also make a commitment to self-help. We call it mutual obligation but the same principle is known by other names in Britain, America and elsewhere. The Blair and Clinton administrations are adopting a similar approach to welfare reform.

And it is just as relevant to the indigenous community as to any other segment of the population. Lowitja O’Donoghue, who has attended this forum in her time as chairman of ATSIC, recently said, and I quote:

“It is true that we have got to talk about the responsibilities we have on the ground, to make sure our people actually take up their responsibilities...” (The Age 1.5.99)

The end of welfarism, as it has been called by some, does not mean any lack of compassion. What it does mean is distinguishing those measures that perpetuate welfare dependency from those that genuinely alleviate disadvantage and inequality in the long-term.

It also means policies that facilitate and promote genuine economic independence for indigenous people, policies that go beyond the catchcry of land and mining royalties and encompass both individual skills development and productive business enterprises.

As a Government we have sought, over the past three and a half years, to change direction in indigenous affairs away from welfare dependency. This has caused not unexpected controversy and debate but after years of stagnation the Government believed there was no other way forward.

Real progress

There is a commonly expressed view in Australia – in both Aboriginal and non-Aboriginal circles – that we have too little to show for the huge efforts, both legislative and financial, of recent decades.

After those wasted years of stagnation, many non-Aboriginal Australians – and not just the hostile critics – feel that the effort and the resources have been wasted or that the problems are insoluble. A lot of indigenous leaders are similarly frustrated, even to the point of claiming that nothing has really been achieved.

There have been claims that this is because of governmental incompetence, parsimony or mischief, and assertions that the solution ultimately lies in the direction of forms of Aboriginal sovereign self-government as contemplated by the “self-determination” provisions of the Draft Declaration of the Rights of Indigenous Peoples.

The Draft Declaration itself is at risk of becoming a distraction from the real tasks and priorities before us. I note that on this issue, Noel Pearson has also not been silent, and I quote:

“Rather than deal with these hard and real questions, our concept of self-determination has instead occupied the realm of legal and political theory and rhetoric. About the right to self-

determination and international law. About concepts of autonomy and sovereignty and so on. Whilst this level of discourse is important, the practical realities of self-determination are being ignored”.

The Australian Government rejects “the politics of symbolism”. We believe in practical measures leading to practical results that improve the lives of individual people where they live. And in Australia there is unambiguous empirical evidence that the socio-economic status of indigenous Australians is progressively improving. Australia’s policies are working. Of course there are some who refuse to consider the facts, and instead campaign on empty, emotive rhetoric.

The quite substantial increase in funding over the past 30 years perhaps highlights best the commitment of successive Australian governments to indigenous programs.

In comparable dollar terms, in 1969/70 the Australian federal government spent \$60 million on indigenous programs. By 1979/80 funding grew six-fold to \$350 million. By 1989/90 it had grown to \$950 million. And by 1999/00 expenditure reached \$2.2 billion dollars Australia. That is \$1.5 billion US dollars this year. And of the 390,000 Australians who identify themselves as indigenous, only 230,000 rely on government support.

Let me now illustrate what has been happening in Australia with a few simple, unarguable facts.

- Despite claims by some to the contrary, total funding on Indigenous support programs has not been cut under the current Government. Not only has it been redirected (into priority areas such as health, education and employment) but it has also increased substantially in real terms. This years funding of A\$2.2 billion is an all time record high.
- Today 15 per cent of Australia (including many mineral-rich areas) is already Aboriginal owned or controlled. That is an area the size of France and Spain combined.
- Almost 80 per cent of the continent can now potentially be claimed under the new common law right of native title.

- 20 years ago the indigenous infant mortality rate was 20 times the non-indigenous rate. Today it has been slashed by over 75 per cent, to a level equivalent to that of non-indigenous Australians in the early 1960s.
- Today the principal threats to Aboriginal health, especially adult health, come less from infectious diseases associated with environmental or living conditions, than from contemporary lifestyle influences such as tobacco and substance misuse and resultant behavioural problems, including violence and injury.
- Although there is still much more to be done in the field of education, there has also been dramatic improvement with the proportion of indigenous children who stay on until the final year of schooling quadrupling since the mid 1970s. The proportion with post secondary school qualifications has more than doubled over the same period and as I mentioned earlier higher education (university) enrolments have tripled in the past decade alone.
- In the area of law and justice, progress has been slow. There are complex reasons for this, including the continuing socio-economic disadvantage experienced by indigenous people and hardening community attitudes towards drugs and crime. Aboriginal imprisonment rates remain unacceptably high but the rate of Aboriginal deaths in prison custody is now lower than the non-Aboriginal rate, and that, at least is good news.
- In the case of employment, the proportion of indigenous Australians employed in professional occupations has increased from 14 per cent to 22 per cent in the last decade. And as I mentioned earlier, the number doing trade training through apprenticeships and the like has jumped substantially over the past four years.
- Finally, in the area of housing, we have moved from a situation in the early 1970s where up to 20 per cent of indigenous families lived in improvised dwellings to the situation today where less than 3 per cent do so. One dollar in every five of federal government spending on public and community rental housing now goes specifically into Aboriginal housing. It is also a measure of improving Aboriginal socio-economic circumstances that over the same period the proportion of Aboriginal families who own or are purchasing their

own home has increased from one in four to one in three of all families.

This issue of individual home ownership is an appropriate point at which to return to my opening comments and to the theme of this week's deliberation – land and its significance. There is no doubt that land is important, for all sorts of historic, social and cultural reasons.

But it is no economic panacea on its own. In the long term it is education – developing and realizing the skills and capabilities of individuals – that is the only sustainable source of economic independence. That is the way the world is heading. As Nelson Mandela said, and I quote:

“There are two ways to break out of poverty. The first is by formal education and the second is by the worker acquiring a greater skill at his work and thus higher wages.”

I recently attended a national indigenous awards night and a young man called Gary Green, from Adelaide University, won the youth of the year award. In his acceptance speech he echoed the words of Nelson Mandela when he said, and I quote:

“We, as indigenous people, are the only ones to face our challenges and struggles head on. In order to fight those challenges in the new millennium we have to equip ourselves with the tools and knowledge of the current communications revolution... Education for me has been a tool in which I have had the ability to develop further skills that will help indigenous people move into the new millennium with the use of information technology and new electronic media as means of new communication... A waterfall had to start with a drop of water. I guess I am that drop of water in the path I have chosen to take...”

Government support services remain essential but, in order to take advantage of available opportunities, people must see themselves as creating their own future, rather than being simply victims of the past.