

Addresses to the
**United Nations' Working Group
on Indigenous Populations**

GENEVA

July 1992

by
the Chairperson of ATSIC,
Miss Lois O'Donoghue, CBE, AM

and
Commissioner for Torres Strait
Mr George Mye, MBE

ATSIC

AUSTRALIA

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

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ATSIC

The Aboriginal and Torres Strait Islander Commission is a unique experiment in the management of Indigenous affairs. Formed in 1990, ATSIC has 60 Regions which are grouped into 17 Zones. Indigenous people within those Regions elect between 10 and 20 representatives to a Regional Council; the Regional Council chairpersons form Zone Councils. Each Zone Council elects a representative to sit on the ATSIC Board of Commissioners, along with three Commissioners appointed by the Minister for Aboriginal and Torres Strait Islander Affairs. The Board sets policy which controls its \$A500 million budget, and advises the Government on matters affecting Indigenous people. It has an administrative staff of approximately 1,000 people in 33 offices around Australia. ATSIC's Statement of Purpose is on Page 9.

ATSIC ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

Madam Chair,

Distinguished Members of the Working Group,

Ladies and Gentlemen.

I am very pleased, as Chairperson of the Aboriginal and Torres Strait Islander Commission of Australia, representative of Australia's indigenous peoples, to once again have the opportunity to address the working group. I wish to acknowledge the special place ATSIC occupies at this meeting.

During the past twelve months there have been significant developments in indigenous affairs in Australia leading to the further empowerment of our people.

The year also provided the Australian people with a number of occasions on which to reflect on the status of Aboriginal and Torres Strait Islander peoples.

Two events in particular stand out.

Last January we marked the 20th anniversary of the Aboriginal Tent Embassy.

Twenty years ago on January 26, 1972, four young men set up a tent on the lawn in front of Australia's Parliament House in Canberra, which they called the Aboriginal Embassy.

The Embassy became the focus of national and interna-

tional attention. It was a rallying point. The issues of land rights, and self-determination were firmly placed on the political agenda.

It marked a new direction in Aboriginal affairs, an emerging and strong feeling of Aboriginal identity and a more assertive Aboriginal leadership.

The Aboriginal flag which was raised at the Embassy soon became a recognised and unifying symbol.

The other event was the 25th Anniversary of the Constitutional Referendum. This occasion gave us an opportunity to remember the recent past and to pay tribute to those Aboriginal people who struggled hard for justice and Aboriginal rights in what became our own civil rights movement.

The Referendum to change the Constitution was very important for our people.

The Constitution did not allow Aboriginal people to be counted in the population census and the Commonwealth Government had no power to legislate for Aboriginal people.

In the referendum in 1967, 92 per cent of the population voted 'yes' to change the Constitution. It was an act of redress on behalf of Australia's majority population to a people dispossessed and marginalised.

1967 ushered in a national approach to Aboriginal advancement so that over the last 25 years the Commonwealth Government has effectively assumed a special responsibility in Aboriginal affairs.

Over the last twenty five years, we have seen a major policy shift from assimilation for Aboriginal and Torres Strait Islander peoples to self-management, now the cornerstone of government policy. It is that policy which has

given birth to ATSIC.

ATSIC is the culmination of a long line of attempts by governments to achieve Aboriginal self-management.

Its establishment was also an acknowledgment that, to a large extent, previous arrangements had failed. They failed to empower Aboriginal and Torres Strait Islander peoples.

I have mentioned these events because it is important that we have an historical perspective against which to place more recent developments.

The Australian Prime Minister has put indigenous affairs high on the Government's list of priorities and reminded the nation that there is no greater goal for Australians than the delivery of long overdue justice to Aboriginal people.

In an address to the National Press Club in Canberra, I placed some important matters of concern on the national agenda.

I reminded people that the Australian Constitution still does not acknowledge the existence of Aboriginal and Torres Strait Islander peoples, a fact which irreparably limits the capacity of Australians to define themselves.

We are coming up to the centenary of Australian Federation on the 1st of January 2001. There is currently a constitutional review process underway and ATSIC is determined that the whole question of Aboriginal and Torres Strait Islander status should be considered.

The Constitution must be changed to include the recognition of the special position of Aboriginal people within Australian society.

What we seek is appropriate recognition of our status as

the First Australians. There is some movement in that direction.

The very basis of European occupation of Australia since 1788 has been the doctrine of 'terra nullius'. Last month, the High Court of Australia finally laid to rest this doctrine.

In a landmark decision, the High Court of Australia - the highest court in the land - declared that the traditional land rights of the Murray Island people in the Torres Strait had not been extinguished by the arrival of the British in Australia.

My colleague, Commissioner George Mye will provide a more detailed report on this important legal decision.

The decision is of great significance and is likely to set a completely new agenda for the national debate on indigenous land rights.

The High Court has now ruled that Australia was not legally, or in fact, a vacant and unoccupied territory but was occupied and possessed by indigenous communities with traditions and customs of their own.

This judgement will need to be closely analysed. The question now is: having achieved this result, having rewritten legal history and presented a new set of principles, what are the implications for future generations of indigenous peoples?

Last year I spoke about the final report of the Royal Commission into Aboriginal Deaths in Custody which comprehensively documents the extent of Aboriginal disadvantage in Australia.

The report highlighted Aboriginal exposure to unemployment, lack of education, poor health, alcohol and drug abuse, racism and a disastrous economic situation.

The 339 recommendations of the report are aimed at redressing - not only the tragic circumstances of individual deaths in custody - but all the major areas in which indigenous people face discrimination, disadvantage and neglect.

The facts are quite shocking - Aboriginal employment is four times higher than that for other Australians and the income levels are about half. The imprisonment rate is alarming - some 29 times higher.

For our indigenous people, the Royal Commission Report is the most important social document this century.

And its impact will be felt right into the next century.

Perhaps, as never before, the Royal Commission brought to the attention of non-Aboriginal Australians the plight of Aboriginal Australians and the disadvantage and discrimination that have been suffered for over 200 years.

The vast majority of the recommendations have now been supported by the Commonwealth and State Governments.

It is very encouraging that there is a co-operative and co-ordinated approach to implementing the recommendations.

The governments' responses to the recommendations were shaped by an unprecedented nation-wide consultation with Aboriginal and Torres Strait Islander peoples.

In all, over fifty meetings were held between November 1991 and February 1992, some of which were attended by up to 500 people.

ATSIC organised the consultative process - which was most impressive - and as the representative of indigenous peoples, negotiated the package of measures announced

by the Commonwealth Government. We made an historic presentation to the Cabinet.

In response to the recommendations, the Commonwealth Government has allocated \$400 million over a five-year period for major reforms of the justice system, substance abuse programs and a whole range of measures to tackle unemployment and economic disadvantage.

This amount is in addition to the \$1.2 billion already being spent each year by the Australian Government on indigenous affairs.

This has been a landmark decision - a great step forward. It's a new level of expenditure on Aboriginal programs.

It will be ATSIC's responsibility to co-ordinate and monitor the spending of this money - money that will be spent mainly by Aboriginal community organisations on a range of programs to improve living conditions.

This reflects the major theme of the Royal Commission - that of empowering Aboriginal people.

It is a theme which the ATSIC Board of Commissioners has incorporated in its statement of purpose in our new corporate plan to be launched next month.

I would like to take this opportunity to read the statement because it clearly outlines our task.

"The goal of the Aboriginal and Torres Strait Islander Commission is to secure the empowerment of Aboriginal and Torres Strait Islander peoples so that, through self-determination, they can make the decisions that affect their lives and share in Australia's land, wealth and resources, contributing equitably to the nation's economic, social and political life, with full recognition of their indigenous cultural heritage as the first Australians."

Last May, State and Territory Governments made a commitment to give the needs of Aboriginal and Torres Strait Islander peoples a high priority in their 1992-93 Budgets.

All governments endorsed a new plan of action for improved intergovernmental relations and co-operation in indigenous affairs. This plan embodies a national commitment to improved outcomes for Aboriginal and Torres Strait Islander peoples.

Inherent in the new approach is a recognition of a shared responsibility by all spheres of government.

All governments are now committed to participating in the ATSIC regional planning process.

Last January the State Government of Western Australia passed legislation entitled the *Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill*.

ATSIC protested strongly to the Western Australian Government because in our view the legislation makes a mockery of the Royal Commission's proposals to reform the juvenile justice system. The emphasis of this legislation is on imprisonment and not rehabilitation.

The legislation imposes harsh prison sentences on young offenders, who in the main are Aboriginal children. Nearly 70 per cent of young people in detention in Western Australia are Aboriginal.

It is our view and that of the Human Rights and Equal Opportunity Commission that the Western Australian legislation breaches Australia's human rights obligations. Australia is a signatory to both the International Covenant on Civil and Political Rights and the International Convention on the Rights of the Child.

The Western Australian Parliament's own committee of review into the effects of the legislation has recently

described the legislation as unworkable and unsustainable.

In previous years I have reported on the poor health status of our indigenous people. By every measure, the health of indigenous Australians is worse than that of other Australians.

Aboriginal health has deteriorated in the past 25 years and is now the gravest crisis facing our people.

The Royal Commission found a clear relationship between the continuing poor health of Aboriginal and Torres Strait Islander people and their deaths in custody.

This underlying disadvantage experienced by indigenous people is reflected in high rates of illness, self-destructive behaviour, crime and violence.

In responding to the Royal Commission, Governments have accepted the need for increased effort in the areas of substance abuse education, prevention, intervention, treatment and rehabilitation services.

We have now established an indigenous designed, controlled and staffed Drug and Alcohol Service under the National Aboriginal Health Strategy.

The newly formed Council for Aboriginal Health which met for the first time in May, brings together representatives from indigenous health organisations as well as Governments.

This Council, together with ATSIC Commissioners, Regional Councils and State/Territory Health Tripartite Forums will help to ensure that indigenous people are represented at all levels of policy and program development.

The Commonwealth Government has promised \$232

million over five years. All states except Tasmania have committed funding and about \$60 million will be spent this year.

ATSIC is fully committed to ensuring the success of the International Year of the World's Indigenous Peoples and we will be encouraging a range of activities which will provide lasting benefits to indigenous peoples.

ATSIC has seconded one of our senior people, Helen McLaughlin to the UN Centre for Human Rights in Geneva to assist the UN in its work for the International Year.

I am also very pleased to announce our contribution of \$10,000 to the United Nation's Voluntary Fund.

Finally, Madam Chair, Australia has embarked on a decade long process of reconciliation in the lead up to the centenary of Federation in 2001. The Council for Aboriginal Reconciliation, established by an act of Parliament, has the task of building bridges of understanding between all our peoples.

Mr Patrick Dodson has been appointed Chairman of the Council.

The reconciliation process has the support and commitment of all political parties, the churches, business, the trade union movement and a wide range of Aboriginal and Torres Strait Islander peoples and organisations.

This is an urgently needed and renewed emphasis on educating the wider population about the needs, aspirations and achievements of our people.

The very nature of the society we will have in the future will depend upon this.

We can look to the future with renewed hope.

ADDRESS BY MR GEORGE MYE, MBE, ATSIK COMMISSIONER FOR TORRES STRAIT, TO THE UNITED NATIONS' WORKING GROUP ON INDIGENOUS POPULATIONS, GENEVA, JULY 1992.

Madam Chairperson,

Distinguished Members of the Working Group,

Traditional Elders and Young Leaders,

Ladies and Gentlemen,

As leaders of our communities, we play a most important role in the preservation of our society.

We carry with us the key that will ultimately transform our children's hopes and aspirations for a better future, a reality.

On that note, Brothers and Sisters of the Working Party, it gives me great honour to share with you - at the very pinnacle of a long and challenging career - an historical occasion for the Indigenous peoples of Australia.

Madam Chairperson, Eminent Members of the Working Party - 'Terra Nullius' in Australia is dead.

I have had the privilege to witness the recognition of native title - which was stripped away from our forefathers in 1788 under European Law - reinstated through a decision handed down on 3 June 1992 by the High Court of Australia.

Madam Chairperson, five Plaintiffs for the Meriam people of Murray Island in the Torres Strait of Australia initiated a challenge in the High Court of Australia in May 1982 seeking recognition of their prior ownership of their traditional land. This became known as the Mabo v Queensland case.

During the course of proceedings, three of the five Plaintiffs died, as did several important witnesses, and only two of the five Plaintiffs were alive to witness the landmark decision handed down on 3 June 1992 after ten years of proceedings. One of those Plaintiffs is here with us today - Father David Passi.

Madam Chairperson, the High Court of Australia found that European occupation of Australia in 1788, based on the doctrine of 'Terra Nullius', did not extinguish native title.

Furthermore, the High Court of Australia has described the doctrine as a convenient legal justification whereby Colonial and State governments since 1788 had wrongfully and shamefully dispossessed Aboriginal and Torres Strait Islander people.

An injustice that we, as Indigenous peoples, know only too well, my Brothers and Sisters.

In effect, this has meant that:

the High Court of Australia decision handed down on 3 June 1992 has substantiated the traditional land title of the Meriam people in the Torres Strait of Australia beyond all doubts;

and

secondly, another precedent has been set in the entire history of European occupation that will provide a basis for similar claims to be made by other Indigenous peoples.

Madam Chairperson, this has not quenched our thirst for unconditional justice.

The fire that burns within our people is still alight and our struggle, Madam Chairperson, will now be continued

from a new and more sturdy political horizon.

In a world where the global priorities are changing and humble custodians like ourselves are being called upon to advise on ecologically sound options necessary for the preservation and sensible management of our environment, let me just say that it is ironic that the age of industrialization has finally caught up with my people in the Torres Strait, and we are now beginning to experience the threat of pollution from mining wastes.

Madam Chairperson, the area of the Torres Strait spans a narrow passage of no more than 150 square miles between Australia and Papua New Guinea, accommodating a community of some 5,000 people scattered throughout 18 inhabited islands.

Although still in its preliminary stages, we stand a high risk of inheriting massive pollution - principally from the Ok Tedi Mine in the Western District of Papua New Guinea - despite countless appeals made to the authorities in Australia and Papua New Guinea.

Additional risks of pollution are now being experienced with the opening of the Kutubu Oil Mining operation in the Papuan Gulf, which will open other shipping routes and increase heavy shipping traffic in amongst the narrow and shallow channels of the Torres Strait.

Whilst we are assured by the Department of Foreign Affairs in Australia and its counterpart in Papua New Guinea that our interests and traditional practices will be protected under the Torres Strait Treaty between Australia and Papua New Guinea, our basic human rights are increasingly being undermined under the very same Treaty arrangements, all in the interest of national priorities.

The Minister for Aboriginal and Torres Strait Islander Affairs has taken a genuine interest in the pollution issues

in the Torres Strait in his bid to attend the next Joint Advisory Council meeting between Australia and Papua New Guinea, scheduled for 3 and 4 August 1992.

To all Indigenous peoples, Madam Chairperson, every land form, every part of the sea, every hidden reef - even the sun, the moon and the stars - are integral parts of customary practice and law.

My Brothers and Sisters, the Torres Strait is no different. Its islands, reefs, seas and stars are all an integral part of our history.

The Torres Strait Islands provide shelter for my people; the seas and reefs supply us with food; and the celestial stars navigate our vessels safely home during the night. We have occupied this area since time immemorial.

Understandably, our main sustenance is provided by the sea.

The urgency of pollution to our life-sustaining islands can no longer be resolved through the conventional methods available to us.

Any disruption to the fragile ecosystem which supports the Torres Strait race of people (by pollution) will ultimately lead to two unforgiveable dilemmas: the genocide of my people, or just as sadly, the forced migration from our beloved homelands.

On a lighter note, Madam Chairperson, this is not to say that we have not experienced major developments in other areas of race relations in Australia.

It is becoming more and more evident in our negotiations with the State and Federal governments of Australia that there are major breakthroughs at the administrative levels, thus enabling more power to be vested into the hands of local communities and organisations to manage our

own affairs and resources under State and Federal government legislation on Aboriginal and Torres Strait Islander affairs.

In the last 12 months, we have seen the Queensland Government's Department of Family Services and Aboriginal and Islander Affairs move towards a new self-government model which is being recommended in the review of that State's Community Services and Aboriginal and Torres Strait Islander legislation.

Support for the Aboriginal and Torres Strait Islander Commission and its public administration is growing and the reconciliation process is making headway.

Overall, Madam Chairperson, there is a commitment in Australia to transfer the responsibility of Indigenous peoples' affairs at the administrative level over to the Aboriginal and Torres Strait Islander peoples themselves by the State and Federal governments. However, without sufficient funding resources, self-management would become exceptionally hard to achieve and failure would indeed be inevitable.

Yes, the statistics still tell us that Aboriginal and Torres Strait Islander people are struggling to overcome our sub-standard health, our lack of adequate housing and employment opportunities, and our low socio-economic and cultural status. But do not despair, we will survive. We have been here since time immemorial and we plan to be still here until the end of time!

The Mabo v Queensland case and the subsequent decision by the High Court of Australia has infused the Aboriginal and Torres Strait Islander people of Australia with a new sense of pride and purpose. The Torres Strait Islander people have since established a working group with the prime responsibility of formulating a 'statement of position' to address the implications of the decision on

3 June 1992 by the High Court of Australia on the Mabo v Queensland case.

Madam Chairperson, this Torres Strait Island working group will be seeking representation on the Economic and Social Council (ECOSOC) to the United Nations and other International Forums, such as the South Pacific Forum.

The 1993 International Year of the World's Indigenous Peoples will be an important period for the Aboriginal and Torres Strait Islander people to approach the State and Federal governments of Australia to reopen its Constitutional debate on the rights of its Indigenous peoples.

There can be no reconciliation without justice. Both the Torres Strait Islander people and the Aboriginal people will continue to judge the processes of reconciliation against the extent to which this justice is delivered.

In closing Madam Chairperson, I would like to call my colleague, the Chairperson of the Aboriginal and Torres Strait Islander Commission, to join me in presenting to the United Nations the Torres Strait Islander flag, which symbolises the Torres Strait Islander nation of people.

Madam Chairperson, I thank you for the opportunity to speak here today in the presence of such a distinguished gathering of representatives from our International Family of Indigenous Peoples and, especially on behalf of the Torres Strait Islander people of Australia, I would like to indicate to you all our support for your continued and successful work.
