II. Sovereignty, Independence and Self-Determination

Self-determination and self-management - Australian Aborigines - Prime Ministerial statement at Australian launch of the International Year for the World's Indigenous People

Following are excerpts from a speech made on 10 December 1992 by the Prime Minister, Mr Paul Keating, at the Australian launch of the International Year for the World's Indigenous People at Redfern:

I am very pleased to be here today at the launch of Australia's celebration of the 1993 International Year of the World's Indigenous People.

It will be a year of great significance for Australia.

It comes at a time when we have committed ourselves to succeeding in the test which so far we have always failed.

Because, in truth, we cannot confidently say that we have succeeded as we would like to have succeeded if we have not managed to extend opportunity and care, dignity and hope to the indigenous people of Australia - the Aboriginal and Torres Strait Island people. ...

That is perhaps the point of this Year of the World's Indigenous People: to bring the dispossessed out of the shadows, to recognise that they are part of us, and that we cannot give indigenous Australians up without giving up many of our own most deeply held values, much of our own identity - and our own humanity.

Nowhere in the world, I would venture, is the message more stark than it is in Australia.

We simply cannot sweep injustice aside. Even if our own conscience allowed us to, I am sure, that in due course, the world and the people of our region would not.

There should be no mistake about this - our success in resolving these issues will have a significant bearing on our standing in the world. ...

Isn't it reasonable to say that if we can build a prosperous and remarkably harmonious multicultural society in Australia, surely we can find just solutions to the problems which beset the first Australians - the people to whom the most injustice has been done.

And, as I say, the starting point might be to recognise that the problem starts with us non-Aboriginal Australians.

It *begins*, I think, with that act of recognition.

Recognition that it was we who did the dispossessing.

We took the traditional lands and smashed the traditional way of life.

We brought the diseases. The alcohol.

We committed the murders.

We took the children from their mothers.

We practised discrimination and exclusion.

It was our ignorance and our prejudice.

And our failure to imagine these things being done to us.

With some noble exceptions, we failed to make the most basic human response and enter into their hearts and minds.

We failed to ask – how would I feel if this were done to me?

As a consequence, we failed to see that what we were doing degraded all of us.

If we needed a remainder of this, we received it this year.

The Report of the Royal Commission into Aboriginal Deaths in Custody showed with devastating clarity that the past lives on in inequality, racism and injustice.

In the prejuice and ignorance of non–Aboriginal Australians, and in the demoralisation and desperation, the fractured identity, of so many Aborigines and Torres Strait Islanders.

For all this, I do not believe that the Report should fill us with guilt.

Down the years, there has been no shortage of guilt, but it has not produced the responses we need.

Guilt is not a very constructive emotion.

I think what we need to do is open our hearts a bit.

All of us.

Perhaps when we recognise what we have in common we will see the things which must be done – the practical things.

There is something of this in the creation of the Council for Aboriginal Reconciliation.

The Council's mission is to forge a new partnership built on justice and equity and an appreciation of the heritage of Australia's indigenous people.

In the abstract those terms are meaningless.

We have to give meaning to "justice" and "equity" – and, as I have said several times this year, we will only give them meaning when we commit ourselves to achieving concrete results.

If we improve the living conditions in one town, they will improve in another. And another.

If we raise the standard of health by twenty per cent one year, it will be raised more the next.

If we open one door others will follow.

When we see improvement, when we see more dignity, more confidence, more happiness – we will know we are going to win.

We need these practical building blocks of change.

The *Mabo* judgment should be seen as one of these.

By doing away with the bizarre conceit that this continent had no owners prior to the settlement of Europeans, *Mabo* establishes a fundamental truth and lays the basis for justice.

It will be much easier to work from that basis than has ever been the case in the past.

For that reason alone we should ignore the isolated outbreaks of hysteria and hostility of the past few months.

Mabo is an historic decision – we can make it an historic turning point, the basis of a new relationship between indigenous and non-Aboriginal Australians.

The message should be that there is nothing to fear or to lose in the recognition of historical truth, or the extension of social justice, or the deepening of Australian social democracy to include indigenous Australians.

There is everything to gain.

Even the unhappy past speaks for this.

Where Aboriginal Australians have been included in the life of Australia they have made remarkable contributions. ...

Just as Australians living in the relatively narrow and insular Australia of the 1960s imagined a culturally diverse, worldly and open Australia, and in a generation turned the idea into reality, so we can turn the goals of reconciliation into reality.

There are very good signs that the process has begun.

The creation of the Reconciliation Council is evidence itself. The establishment of the ATSIC – the Aboriginal and Torres Strait Islander Commission – is also evidence.

The Council is the product of imagination and good will.

ATSIC emerges from the vision of indigenous self-determination and self-management.

The vision has already become the reality of almost 800 elected Aboriginal Regional Councillors and Commissioners determining priorities and developing their own programs.

All over Australia, Aboriginal and Torres Strait Islander communities are taking charge of their own lives.

And assistance with the problems which chronically beset them is at last being made available in ways developed by the communities themselves.

If these things offer hope, so does the fact that this generation of Australians is better informed about Aboriginal culture and achievement, and about the injustice that has been done, than any generation before.

We are beginning to more generally appreciate the depth and the diversity of Aboriginal and Torres Strait Islander cultures.

From their music and art and dance we are beginning to recognise how much richer our national life and identity will be for the participation of Aboriginals and Torres Strait Islanders.

We are beginning to learn what the indigenous people have known for many thousands of years – how to live with our physical environment.

Ever so gradually we are learning how to see Australia through Aboriginal eyes, beginning to recognise the wisdom contained in their epic story.

I think we are beginning to see how much we owe the indigenous Australians and how much we have lost by living so apart.

I said we non–indigenous Australians should try to imagine the Aboriginal view.

It can't be too hard. Someone imagined this event today, and it is now a marvellous reality and a great reason for hope.

There is one thing today we cannot imagine.

We cannot imagine that the descendants of people whose genius and resilience maintained a culture here through fifty thousand years or more, through cataclysmic changes to the climate and environment, and who then survived two centuries of dispossession and abuse, will be denied their place in the modern Australian nation.

We cannot imagine that.

We cannot imagine that we will fail.

And with the spirit that is here today I am confident that we won't.

I am confident that we will succeed in this decade.

Draft Declaration on the Rights of Indigenous Peoples – Self-determination and indigenous peoples – Australian position

The following is extracted from a statement made on 24 July 1992 by Mr Colin Milner on behalf of the Australian delegation to the Tenth Session of the Working Group on Indigenous Populations (of the UN Sub–Commission on Prevention of Discrimination and Protection of Minorities):

Whether a declaration on the rights of indigenous peoples should recognise a specific right of self–determination for indigenous peoples is in many ways the key matter to be determined in our consideration of the draft text before this working group. Such language would reflect the aspirations of indigenous peoples as they have been expressed in this forum. Many States clearly have a problem with the language of self–determination in this context. The Australian Government delegation, however, expressed its support for the inclusion of self–determination language in the draft declaration at last year's meeting of the working group, whilst recognising the legitimate concern of states to preserve their territorial integrity.

Our delegation is conscious that Australia is one of the very few States that have supported this point of view. ...

Let me begin by saying that the Australian Government delegation starts from the commonly held view that there is no current substantive international law recognition of a right of self–determination for indigenous peoples, as separate and distinct peoples within larger States. It is not recognised in ILO Convention 169, the only available international treaty directly dealing with this area, and we imagine that few States of indigenous peoples represented at

this meeting of the working group would want to suggest that State practice in this area is such that the right is established in customary international law.

It is accepted that self-determination is a principle applying to all peoples. In practice, the application of self-determination as a right in international law has been limited to the decolonisation context as former colonial territories have, in most cases, undertaken an "act of self-determination", acquired their independence and taken their place in the community of sovereign States through membership of the United Nations. The aspirations expressed by the General Assembly in its Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 have been largely fulfilled.

But the application of the right of self-determination in the strict decolonisation context is coming to an end. We must then ask what is the next phase in the evolution of the concept of self-determination? The view of the Australian delegation is that the right of self-determination, in its broad historical context and the political use of the term, has defied tight and tidy definition. On repeated occasions, Australian Government delegations to the General Assembly, to the Commission on Human Rights and to meetings of this Working Group have recognised the political force and dynamic nature of self-determination and stated their view that the concept of self-determination must be considered broadly. The then Australian Ambassador to the United Nations in New York, Dr Wilenski, in addressing UNGA 44, said that:

> Realisation of the right of self-determination is not limited in time to the process of decolonisation nor is it accomplished solely by a single act or exercise. Rather it entails the continuing right of all peoples and individuals within each State to participate fully in the political process by which they are governed. Clearly, enhancing popular participation in this decision-making is an important factor in realising the right to self-determination. It is evident that, even in some countries which are formally fully democratic structural, attitudinal and procedural barriers exist which inhibit the full democratic participation of particular groups.

The Australian government delegation to this meeting considers that indigenous peoples are among those groups which may have to overcome barriers inhibiting their full democratic participation in the political process by which they are governed so that the full range of human rights are theirs to enjoy. Specific recognition of the right of self-determination for indigenous peoples, as separate and distinct peoples, will assist them to overcome the barriers to full democratic participation.

But the concerns of indigenous peoples clearly do not stop here. Given the variety of circumstances in which indigenous peoples find themselves, we would not want to be prescriptive as to the exact form self-determination should take for indigenous peoples. Obviously, it should encompass a range of possibilities. In our view a system which guarantees full and genuine participation and fundamental human rights as well as recognising the special position of indigenous peoples could provide an adequate and real realisation of self-determination.

In Australia, Aboriginal and Torres Strait Islander peoples are empowering themselves to take control of their own lives. They are moving to overcome social and economic barriers which may inhibit the full enjoyment of the right

of political participation and the range of fundamental human rights to which they are legally entitled. The establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) has given greater effect to the policy of self-determination of indigenous peoples in Australia.

Self-determination assumes a central place in Article 1 of both the International Convenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. It has been said that the right is fundamental to the enjoyment of all other human rights inscribed in the two covenants. Self-determination clearly cannot be allowed to wither away in the post-declonisation period and must be capable of adjustment to changing circumstances.

Clearly, if self-determination in general means that each people has the option of full independence and forming their own State, it will be very difficult for States to accept the application of the right to many groups, including indigenous peoples. This, in any case, would be a narrow view as it would limit the human rights content of the right.

As the general debate on self-determination has developed in international forums, however, the view has emerged that there may be ways in which the right may legitimately be exercised short of the choice of separate status as an independent sovereign State. The Committee of 24 has always contemplated more decolonisation options than sovereign independence; acts of self-determination for colonial territories have included options such as free association or integration with the colonial power. In the context of recent developments in central and eastern Europe, the views have been put forward that the right of self-determination may only be exercised in a manner consistent with other basic principles, such as territorial integrity and the peaceful settlement of disputes, and in a way which does not lead to the oppression of minorities or other human rights violations. It is noteworthy that the right of self-determination of peoples and the right of territorial integrity of States have had to be balanced previously in such instruments as the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration of Principles of International Law on Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

One way of helping to overcome the anxieties of States regarding the inclusion of self-determination language in the draft declaration would be to make more explicit the reference at operative paragraph 4 of the revised text to the Friendly Relations Declaration. We would commend to the members of the Working Group language along the lines of the following provision from that declaration for inclusion in the draft Declaration on the Rights of Indigenous Peoples:

> Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the Territory without distinction as to race, creed or colour.

If such language were included in the draft then it seems to us that it is then possible to include a reference to self-determination along the lines already presented by the working group to this forum. If that were to happen, then it seems to the Australian Government delegation that the effect in practice would be to require States to engage seriously and sensitively with their indigenous peoples on the issue of giving meaningful effect to the concept of self-determination as part of their internal political processes. This, Madam Chairperson, would be a desirable outcome to our deliberations.

Draft Declaration on the Rights of Indigenous Peoples - Self-determination and indigenous peoples - Australian Aborigines

Following are extracts from a statement made on 28 July 1992 by Mr Robert Tickner, Minister for Aboriginal and Torres Strait Islander Affairs, to the Tenth Session of the United Nations Working Group on Indigenous Populations:

Self-Determination

Madam Chairperson, you will be aware that the Australian Government's delegation at this meeting has made it clear that it supports the incorporation of the concept of self-determination in the draft declaration. It accepts that the term will require careful elaboration. It is my responsibility, as Australia's Minister for Aboriginal and Torres Strait Islander Affairs, to set out how important a foundation the aspirational term "self-determination" has provided for Australia's domestic achievements.

I will be reporting not only on a wide range of new measures but, equally significantly, on government initiatives determined by Aboriginal and Torres Strait Islander peoples themselves. ...

Process of Reconciliation

Last year I reported on the widespread support by both Aboriginal and non-Aboriginal people for a process of reconciliation between Aboriginal and non-Aboriginal peoples and on legislative steps to initiate this process.

I am pleased to report that the process was initiated in September 1991 with the unanimous support of the Federal Parliament. The process is to be guided at the national level by a council comprising some 25 prominent Australians, including both Aboriginal and Torres Strait Islander people and non-indigenous Australians. ...

The council's work will aim 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;
- foster a commitment from Governments at all levels to cooperate to address progressively Aboriginal disadvantage and aspirations in relation to land, housing, law and justice, cultural heritage, education, employment, health, infrastructure, economic development and other relevant matters;

- consult with Aboriginal people 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.

I should emphasize here that the issue of a document, agreement, treaty or compact, is only one of the issues to be addressed by the process of reconciliation.

Aboriginal and Torres Strait Islander people would be justifiably angry if there were not real progress by governments in addressing Aboriginal deaths in custody. As I have repeatedly said, there can be no reconciliation without justice.

Similarly, no indigenous Australian believes that real progress is possible without educating non-indigenous Australians about indigenous issues.

Having said that, I believe there is a real need for the public debate on the issue of a document, by whatever name, to move ahead in Australia from what has become a sterile and unproductive focus on the name of a document with too little effort to address the far rougher political questions of who would negotiate such a document (by whatever name) and what the terms of a document might be.

As a result of the establishment of the reconciliation process a framework now exists which will allow these issues and others to be addressed ... .

The process of reconciliation has been formulated to keep faith absolutely with indigenous peoples' aspirations and to open up the potential for a substantial evolution in indigenous and non-indigenous relations in the lead up to the centenary of the Australian National Government in 2001.

In this process a number of matters of critical importance need to be re-emphasized.

Firstly there has been no attempt made by the government to define the terms of any document, instrument, treaty, compact or agreement which may result from the process. The Government deliberately refrained from defining parameters for such a document.

Secondly there has been no attempt to give any final name to the document or documents.

Thirdly the option has been left open for a number of separate documents related to Aboriginal people or a separate document for Torres Strait Islanders should this be the wish of Australian indigenous peoples.

Fourthly no decision has been made on which party or parties should be responsible for negotiating any document.

These matters have been deliberately left open and must first and foremost be the subject of extensive consultation by Aboriginal and Torres Strait Islander peoples.

The essential message I bring is that it's time that Australian people both non-indigenous and Aboriginal and Torres Strait Islander got serious about the issue of a document. ...

Change of Portfolio Title

Madam Chair, I should also report on a change of my portfolio title to Minister for Aboriginal and *Torres Strait Islander* Affairs which was officially endorsed by the Governor-General in December last year.

The change is significant because it symbolises the explicit recognition of Torres Strait Islanders as a distinct indigenous people in Australia. This will be of particular importance to Australia later this year in meeting with Papua New Guinea to discuss developments under the Torres Strait Treaty. The Australian Government will take the opportunity to emphasise the importance for Torres Strait Islander people of protecting their environment. ...

The views set out in the two statements quoted above have also been put forward by Australia in other fora. For example, in a statement to the Third Committee of the United Nations General Assembly at UNGA 47 on 7 October 1992, the Australian Deputy Permanent Representative reiterated Australian Government views on self-determination and its application to Aboriginal Australians.

United Nations Working Group on Indigenous Populations - Future role - Australian proposals

On 2 August 1992 the Minister for Aboriginal and Torres Strait Islander Affairs, Mr Robert Tickner, issued a news release which read in part:

In a major statement to the United Nations Working Group on Indigenous Populations in Geneva, the Federal Minister for Aboriginal and Torres Strait Islander Affairs, Robert Tickner, has urged an expanded role for the United Nations (UN) in promoting the human rights of the world's indigenous peoples.

During his speech, which was acclaimed by Australian Aboriginal and Torres Strait Islander people, Mr Tickner pushed for the Working Group to expand its activities in 1993 - the International Year for the World's Indigenous Peoples.

"Australia is confident that next year, the UN Working Group will adopt the Draft International Declaration on the Rights of Indigenous People", said Mr Tickner at the conclusion of the Working Group's annual meeting.

"The Australian Government has taken the leading role in the Working Group meeting in supporting the preparation of the draft declaration, but we must not stop there.

"The Working Group is the only major UN forum which has a direct and targeted focus on the rights of indigenous people and there is a need to expand its work in this long neglected area of human rights."

Mr Tickner said that among the ideas for action proposed by the Government for the Working Group were a review of international standards on the rights of indigenous people and the provision of expert advice to governments and relevant organisations upon request.

"A further major initiative which I have advocated is the conduct of a major new international study on the human rights of indigenous people", Mr Tickner said.

"Australia has also taken up, within the UN, the critical need for continuing involvement of indigenous people in further drafting of the declaration on the rights of indigenous people as it moves through the UN processes for final adoption by the General Assembly.

"Australia remains an open book on human rights issues relating to Aboriginal and Torres Strait Islander people.

"As a nation we will remain open and accountable on these issues.

"We promote our achievements and reforms but acknowledge that much more remains to be done", Mr Tickner said.

"Our task is to ensure that other Governments are no less accountable for the treatment of indigenous people.

Self-determination - Australian Aborigines - Governmental response to Royal Commission into Aboriginal Deaths in Custody

On 31 March 1992 the Minister for Aboriginal and Torres Strait Islander Affairs, Mr Tickner, made a Ministerial statement upon presenting to the Senate the response by governments to the final Report of the Royal Commission into Aboriginal Deaths in Custody (Sen Deb 1992, Vol 151, p 1410). Part of that statement was as follows:

These historic documents include three volumes of detailed responses by Commonwealth, State and Territory governments to each of the Royal Commission's 339 recommendations. They include an overview supported by Commonwealth, State and Territory Ministers on behalf of their respective governments and a report, entitled *The First Step*, of initial consultations, carried out through the Aboriginal and Torres Strait Islander Commission, ATSIC, with Aboriginal and Torres Strait Islander people across Australia.

On 9 May last year, I tabled the final Report of the Royal Commission into Aboriginal Deaths in Custody. I indicated then that it was one of the most significant Australian social documents of our time. ...

The Royal Commission, however, made a finding [that] those who died were not victims of isolated acts of violence or brutality. Rather, they were victims of entrenched and institutionalised racism and discrimination. Their deaths were the tragic consequence of two centuries of dispossession, dispersal and appalling disadvantage. That is an unpalatable finding, but one which must be tackled head on.

There is a moral and political obligation on those in positions of political leadership, to bring about genuine, lasting change in the lives of Aboriginal and Torres Strait Islander people. We must work so that the injustices documented by the Royal Commission become truly a thing of the past ...

The Australian Government is proud to announce support for 338 of the 339 Royal Commission recommendations and will fund specific first stage initiatives which I will announce today. As the Prime Minister (Mr Keating) has foreshadowed, the Government will make a second major announcement responding to the underlying issues highlighted by the Royal Commission within three months of today's tabling and I will later indicate the thrust of this response. ...

The Government is committed to this process of negotiation and consultation in the development and delivery of all Commonwealth policies and programs in Aboriginal and Torres Strait Islander affairs. This approach to our nation's relations with indigenous people underpins the process of reconciliation which was recognised by the Royal Commission as "the fundamental backdrop to reform and change in Aboriginal affairs". As part of that process the Government has sought an ongoing national commitment to address Aboriginal disadvantage. As I have said, this is the key to reversing the over-representation of Aboriginal people in custody. ...

The Royal Commission's report is of major significance for Australia's international human rights record. Internationally, Australia's human rights record is, I am proud to say, an open book. We are determined to maintain our commitment to ensuring the highest standards in our observance of human rights in Australia. Australia's accession to the First Optional Protocol to the International Covenant on Civil and Political Rights is a very real demonstration of that commitment, as it provides an international right of appeal for all Australians on human rights issues.

The United Nations Working Group on Indigenous Populations, the Human Rights Commission and the United Nations Committee on the Elimination of Racial Discrimination are some of the international bodies vitally interested in the responses of Australian governments to the report. Amnesty International and other international non-government organisations will monitor the implementation of the Royal Commission's recommendations. The declaration of 1993 as the International Year of the World's Indigenous Peoples also puts a spotlight on responses by governments to the Royal Commission.

The Royal Commission confirmed that the principles of empowerment and self-determination are fundamental to change for Aboriginal people. The Royal Commission described the "pinpricking domination, abuse of personal power, utter paternalism, open contempt and total indifference" that confronts Aboriginal people every day of their lives.

Aboriginal and Torres Strait Islander people aspire to control their lives and communities, in the same way that other Australians expect to control their lives and communities. It is for this reason that the Commonwealth seeks to ensure that to the greatest extent possible, and consistent with recommendation 192 of the Royal Commission, funding initiatives to respond to the Commission are directed towards Aboriginal community controlled organisations. This approach is supported by all States and Territories in their responses to the Royal Commission.

On 24 June 1992 the Prime Minister, Mr Paul Keating, made the following remarks in the course of a ministerial statement on the Commonwealth response to the Royal Commission into Aboriginal Deaths in Custody (HR Deb, Vol 184, p 3741):

The Royal Commission's report described the efforts, initiatives and dedication of Aboriginal people and communities and organisations across Australia to protect their culture, restore self-esteem and achieve real equality. Aboriginal and Torres Strait Islander people are taking control of their lives and communities. They are demonstrating the will for renewal and for self-determination.

Today the Government reaffirms its support for these Australians. The concepts "self-determination" and "renewal" are increasingly a reality. The structures are there to ensure both their effect and their survival. Elected Commissioners of the Aboriginal and Torres Strait Islander Commission now make national decisions in Aboriginal Affairs. Sixty elected Regional Councils now make decisions on priorities, needs and funding for their areas. The knowledge and expertise of Aboriginal and Torres Strait Islander organisations are now vital in developing and delivering important Commonwealth programs and services.

In his statement of 28 July 1992 to the Tenth Session of the United Nations Working Group on Indigenous Populations, the Minister for Aboriginal and Torres Strait Islander Affairs, Mr Robert Tickner, made the following comments:

Madam Chair, undoubtedly one of the most fundamental developments that will impact on Aboriginal and Torres Strait Islander people is the Australian Government's response to the Report of the Royal Commission into Aboriginal Deaths in Custody.

Last year, I reported on the work of the Royal Commission which was established in October 1987 in response to a growing public concern about the number of Aboriginal deaths in custody.

The Royal Commission investigated both the causes of the specific deaths and the underlying social, cultural and legal issues associated with them. Never before in the history of Aboriginal and Torres Strait Islander affairs in Australia had a more comprehensive and critical examination of the social conditions of indigenous Australians been undertaken.

In examining the deaths of 99 Aboriginal people who died in custody between 1980 and 1989, the Royal Commission highlighted the stark and overwhelming disadvantage and social inequity that is the common experience of most Aboriginal and Torres Strait Islander people.

The Royal Commission found that Aboriginal and Torres Strait Islander people are over-represented in custody at a rate 29 times that of the general community. In some States the rates are considerably higher and even escalated during the time of the Royal Commission.

The Royal Commission found that those who died did not lose their lives as a result of isolated acts of unlawful violence or brutality. They were found to have lived lives as victims of entrenched and institutionalised racism and discrimination. Their deaths were found to be the tragic consequence of two centuries of dispossession, dispersal and appalling disadvantage.

These issues were found by the Royal Commission to be the underlying causes of the disproportionate numbers of Aboriginal people in custody.

The Royal Commission made 339 recommendations which were directed towards governments at all level and sought reform of every aspect of government policy which impacts on the lives of Aboriginal people.

The recommendations were underpinned by a call for governments to recognise that the pathway to change was to give effect to the principle of self-determination.

The Australian Government is pleased to report its support for 338 of 339 of the Royal Commission recommendations. It has backed up that support with a commitment to increase expenditure on specific, targeted programs to the extent of an additional 400 million dollars over a five year period to give effect to the recommendations. That 400 million dollars will address the underlying causes of Aboriginal deaths in custody including the means by which Aboriginal and Torres Strait Islander peoples can acquire and develop land, address the problem of substance abuse, gain greater opportunity for employment, education and training and be provided with support for economic enterprises within their communities.

It is important to emphasise that, as the Minister responsible for indigenous affairs, I did not take either the proposals for expenditure or the detail of the proposed government response to the Federal Cabinet of the Government of Australia until they had received the endorsement of the National Board of Commissioners of the Aboriginal and Torres Strait Islander Commission (ATSIC).

Indeed, in an historic meeting, the Chairperson and other representatives of ATSIC addressed the Federal Cabinet at the commencement of its consideration of the Commonwealth's response.

In turn, the views of the ATSIC Commissioners were only determined and conveyed to me following a national consultation process with Aboriginal people across the country.

It was my job as the Federal Minister to coordinate a national response to the Royal Commission. I am pleased to report that, with limited exceptions, State and Territory Governments came forward with a response to the Royal Commission recommendations which was broadly comparable to the Commonwealth response. ...

The Commonwealth will work with States and Territories to ensure that all relevant Ministerial and senior officials' forums give ongoing consideration to the progress of implementation of all Royal Commission recommendations falling within their spheres of interest.

ATSIC's role will be complemented by an annual State of the Nation Report on the human rights situation of Aboriginal and Torres Strait Islander people. This will be prepared by an Aboriginal and Torres Strait Islander Social Justice Commissioner within the Human Rights and Equal Opportunity Commission.

Self-determination - Australian Aborigines - Native title to land - *Murray Island* (*Mabo*) case

On 4 June 1992 the Prime Minister, Mr Paul Keating, answered a question without notice from Mr Scott (HR Deb 1992, Vol 184, p 3586). The question and answer were as follows:

MR LES SCOTT: Can the Prime Minister inform the House about the implications of the High Court decision handed down in the *Mabo* case yesterday?

MR KEATING: The High Court case is obviously quite complex and will require careful study by the Commonwealth before we can make a detailed

comment on its implications. I think it is worth saying that the court's decision does not challenge the granting of freehold or leasehold title over much of Australia, as some people have feared it might, and it does not interfere with private property rights of this kind. It does finally quash the outrageous notion of *terra nullius*, which, as Professor Henry Reynolds has said:

> ... was surely the distinctive and unenviable contribution of Australian jurisprudence to the history of relations between Europeans and the indigenous people of the non-European world to deny the right, and even the fact, of possession to people who had lived on the land for 40,000 years.

This was a notion that the dispossession of Aborigines and Torres Strait Islanders was justified because they had no notion of property or because their use of the land did not seem to be in accordance with the biblical injunction to replenish the earth and be fruitful. In other words, if they were not operating to the norm as we as European settlers understood it, they were in a position of not having any notion of property and the whole notion of dispossession was a justified one.

With the *Mabo* decision the Australian law has taken a major step away from this injustice and has finally entered the mainstream of world opinion. As a nation we are now far better prepared psychologically to proceed with the process of reconciliation. With this decision one more barrier – historically, perhaps the greatest barrier – has been effectively removed and the foundations of discrimination and prejudice have been kicked away. At least, that is what I am sure all members in this House hope and want to see pursued in the next decade.

As I said at the ceremony last week to mark the twenty-fifth anniversary of the 1967 Referendum, if we wish to lay claim to being a truly civilised, advanced nation, the arrogance, ignorance and complacency which for so long characterised our attitudes, our policies and our law will have to go. We should consider how much it will do for our self-esteem and our own national self-confidence if we ourselves can eradicate this injustice and prejudice. I think this decision will make the task much easier and, therefore, I believe, will be welcomed by most Australians.

In his statement of 28 July 1992 to the Tenth Session of the United Nations Working Group on Indigenous Populations, the Minister for Aboriginal and Torres Strait Islander Affairs, Mr Robert Tickner, made the following comments upon the *Mabo* case:

> One of the most significant issues in Australian indigenous affairs, an issue which impacts directly on the lives and aspirations of all indigenous peoples, is the recent decision of the high court of Australia in the *Mabo* case.
>
> The decision in this case clearly provides a substantial boost to the proposal for a document, agreement, treaty or compact (by whatever name) as one of the outcomes of the reconciliation process. It gives further momentum to the requirement for governments to act to address the recommendations of the Royal Commission into Aboriginal Deaths in Custody to give effect to Aboriginal land aspirations.

Madam Chair, the plaintiffs in the case, Eddie Mabo and others, challenged the validity of certain State territorial laws and sought a declaration by the High Court of Australia in respect of the status of traditional owners of Murray Island in the Torres Strait.

Regrettably, Eddie Mabo, who fought a long and heroic battle through the legal system, died before the High Court delivered its decision. The decision recognises a form of native title to land for Aboriginal and Torres Strait Islander people. The *Mabo* case has been regarded by international jurists and historians alike as a major step forward in the common law interpretation of the doctrine of communal native title.

The High Court has finally put paid to the offensive and essentially racist notion of *terra nullius* which asserted that the land was "desert and unoccupied", and by which the dispossession and oppression of the indigenous peoples of this country was justified.

In the words of his Honour Justice Brennan: "The common law of this country would perpetuate injustice if it were to continue to embrace the notion of *terra nullius* and to persist in characterising the indigenous inhabitants of the Australian colonies as people too low in the scale of social organisation to be acknowledged as possessing rights and interests in land".

Their Honours Justices Deane and Gaudron described the doctrine of *terra nullius* and the acts and events by which the dispossession was carried out as "the darkest aspect of the history of this nation".

They went on to say that "the nation as a whole must remain diminished unless and until there is an acknowledgement of, and a retreat from, those past injustices".

Clearly then, the *Mabo* decision is one of very great significance for Aboriginal and Torres Strait Islander people and for the Australian community generally. I have pleasure in passing to the Working Group a copy of the High Court decision.

Self-determination - Link with international peace and security

Following are extracts from an address of 28 September 1992 by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, to the Forty Seventh Session of the General Assembly of the United Nations.

There is at least one other non-military threat to peace and security that Australia hopes will get increased attention from this General Assembly, and that is the failure of governments to observe the fundamental standards of human rights as set out in the Universal Declaration and the more detailed Covenants to which so many of us have subscribed.

The Secretary-General in his Report, *An Agenda for Peace*, very properly emphasises in this context the question of the rights of minorities. It is understandable that, freed from the iron restraints of totalitarian regimes, some ethnic and linguistic groups have sought - and no doubt will continue to seek - to establish their own political entities. As has been all too graphically demonstrated in the states of former Yugoslavia, Iraq and elsewhere, there is no easy answer to these aspirations, particularly when self-determination would in such cases be synonymous with fragmentation and itself be a source

of threat to international peace and security. War, particularly civil war, also engenders many of the greatest abuses of human rights.

The bulk of such aspirations to self-determination might, in fact, be met by stricter observance of human rights and guarantees of the rights of all minorities - ethnic, religious, linguistic or social - within democratic frameworks. The General Assembly will have before it at this Session a Declaration on the Rights of Minorities endorsed earlier this year by the Commission on Human Rights. And the launch, later this Session, of the International year of the World's Indigenous People - to which Australia is very strongly committed - will be a further indication of our concern in this regard.

Revision of International Labour Organisation (ILO) Convention No 169: Indigenous and Tribal Populations, 1957 - ILO Convention No 169: Indigenous and Tribal Peoples, 1989 - Australian position on ratification

On 10 September 1992 the Minister representing the Minister for Industrial Relations, Mr Willis, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 185, p 877). The question and answer were as follows:

(Q1) Did the Minister representing the Minister for Employment and Industrial Relations assure Senator Bolkus in his answer to question No 1659 (Senate *Hansard*, 3 June 1987, page 3520) that, once a revised Convention No 107 - Indigenous and Tribal Populations, 1957 had been adopted by the International Labour Conference, Australia would give urgent consideration to its ratification?

(Q2) Did the International Labour Conference adopt Convention No 169 - Indigenous and Tribal Peoples, 1989 on 27 June 1989?

(Q3) Will Australia be able to ratify the revised Convention before the International Year for the World's Indigenous People in 1993?

MR WILLIS: The Minister for Industrial Relations has provided the following answer to the honourable member's question:

(A1) Yes.

(A2) Yes.

(A3) Australia will not be able to ratify the revised Convention before the International Year for the World's Indigenous People in 1993 as consultations on Australia's attitude to the Convention are not yet complete. A draft law and practice report is being prepared in consultation with the relevant Commonwealth/State/Territory authorities, outlining in detail the degree of compliance by Australia with the Convention. In addition, the views of Aboriginal and Torres Strait Islander Organisations and Regional Councils are being sought by the Aboriginal and Torres Strait Islander Commission (ATSIC) about possible ratification of the Convention. It is anticipated that a final position on ratification will be determined in the early part of 1993.

Sovereignty - Antarctica - Australian sovereignty

On 5 November 1992 the member for Fisher, Mr Lavarch, said in relation to the report of the Legal and Constitutional Affairs Committee *Australian Law in Antarctica* (HR Deb 1992, Vol 186, p 2680):

> The other key issue to develop is the point raised by the Honourable Member for Denison in relation to this conflict, I suppose, that exists between Australia's claim for sovereignty over a large part of the continent, our international obligations under the Antarctic Treaty and the fact that our sovereignty is not recognised by many other countries. What we believe should happen is that the Australian law should be enforced. We do not believe that this is in any way in conflict with our Treaty obligations but will enforce our claim to sovereignty. Our failure to enforce law in the past, we believe, has in some way diminished our claim to sovereignty.

The following excerpt is from the report of the Legal and Constitutional Affairs Committee entitled *Australian Law in Antarctica* (footnotes omitted). More extensive extracts from the report are set out above: see pp 436-40 of Chapter V.

> 2.7 The [Antarctic] Treaty intentionally does not provide any resolution of conflicting claims of jurisdiction in Antarctica, but instead, is based on the Contracting Parties "agreement to disagree" on sovereignty claims. This is achieved through Article 4 which provides that any actions taken by signatories while the Antarctic Treaty is in force cannot constitute a basis for asserting a claim to territorial sovereignty in Antarctica. Article 4 also prohibits the assertion of any new claim, or enlargement of an existing claim, to territorial sovereignty while the Treaty is in force.
>
> 2.8 While nothing in the Treaty involves a renunciation by Australia of its claim to territorial sovereignty over the Australian Antarctic Territory, territorial claims in Antarctica are for the most part not recognised by other countries. Australia's sovereign claim to the Australian Antarctic Territory is recognised by only four countries namely New Zealand, France, Norway and Britain.

Sovereignty - Papua New Guinea - Independence from Australia - Australian position on Bougainville

Following are excerpts from an address by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, delivered at the opening of the Papua New Guinea-Australia Ministerial Forum in Madang, PNG, on 6 February 1992:

> Papua New Guinea is a sovereign, independent State, with its own problems and its own way of dealing with those problems. The time has long since passed when Australia could or should intervene in PNG affairs to solve PNG problems. If asked, we shall cooperate with Papua New Guinea in dealing with its difficulties, preferably by doing what we can to strengthen the capabilities of Papua New Guinea's own institutions. But direct Australian involvement, particularly through the stationing of Australian officials or officers in line positions, would neither be acceptable nor successful. ...

> Australian Ministers will also be closely interested in hearing more from their PNG colleagues of recent developments in the Bougainville dispute. There is no reason for Australia to move from the firm support that we have given Papua New Guinea from the outset. We have affirmed that the dispute is an internal PNG matter, indicated our preference for Bougainville to remain a part of Papua New Guinea, and encouraged the PNG Government to work towards a political solution. The Bougainville dispute does have a humanitarian aspect which we must not neglect, and that makes it all the more imperative that the PNG government find ways of ensuring that essential supplies and services are available to all areas of the province. I repeat the commitment that Australia stands ready to help with the reconstruction of the province once a political settlement has been reached.

Other statements concerning Bougainville may be found in Chapter XIV pp 649–51 of this volume.

On 7 May 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, tabled the Government's response to the report of the Joint Committee on Foreign Affairs, Defence and Trade on Australia's Relations with Papua New Guinea (Sen Deb 1992, Vol 152, p 2524). The response included the following statement:

> Respect for the sovereignty and independence of Papua New Guinea and a wish to conduct relations as equals are the fundamental principles underlying the Government's policy approach to its relations with Papua New Guinea. The basic elements of this approach are clearly set out in the Joint Declaration of Principles Guiding Relations between Australia and Papua New Guinea. The signing of the Joint Declaration in December 1987 was a watershed in Australia's relations with Papua New Guinea, representing the closing off of one era and the opening up of another. The Joint Declaration sets out the basic principles of the modern relationship and provides a comprehensive framework for the development of the relationship in the future. The basic principles in the Joint declaration are reflected in the 1989 Treaty on Development Co-operation and the 1991 Agreed Statement on Security Cooperation. Its objectives are also evident in the text of the revised Agreement on Trade and Commercial Relations (PATCRA II), signed in 1991, and the Agreement for the Protection and Promotion of Investments (APPI), signed in 1990.

Self-determination - Cocos (Keeling) Islands

See Chapter V p 434 of this volume for comment on the Cocos Islanders' Act of Self-Determination and subsequent Commonwealth action.

Self-determination - Sudan

On 2 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Chamarette (Sen Deb 1992, Vol 156, p 4095). Part of the question and answer were as follows:

> (Qc) [D]oes the Government support the exercise of the rights of the people of Southern Sudan towards self-determination, as provided in the United Nations' charter?

SENATOR EVANS: The answer to the honourable senator's question is as follows:

(Ac) Australia has consistently supported work in the United Nations to give effect to the right of self-determination of peoples throughout the world. We take the view that the right is not limited in time to the process of decolonisation nor is it accomplished by a single act or exercise. Rather it entails the continuing right of all peoples and individuals within each State to participate fully in the political process by which they are governed. Enhancing popular participation in this decision-making is an important factor in realising the right to self-determination and enabling the full enjoyment of human rights.

We encourage the Sudanese Government and people to resolve their difficulties and differences in accordance with this general principle having regard to the right of political participation.

Sovereignty and self-determination - Israel and Palestinian people - Australian position

Prior to a visit to the Middle East, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release on 6 May 1992 which read in part:

A central objective of the Middle East visit will be to confirm Australia's support for a comprehensive solution to the Arab-Israeli conflict based on UN Security Council Resolutions 242 and 338 and the principle of land for peace.

"Our policy continues to have two main pillars: a total commitment to Israel's right to exist within secure and recognised boundaries, and recognition of the right to self-determination of Palestinian people including, if they so choose, their own independent State", Senator Evans said.