

# Appendix 3

## Social Justice Package – recommendations made in 1995

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### 1. Recognition, Rights and Reform: A report to government on native title social justice measures<sup>1</sup>

The recommendations put forward in this report cover an extraordinarily wide spectrum. Many will require considerable detailed development and negotiation before they can be put into place.

There will have to be ongoing processes of consultation with the Aboriginal and Torres Strait Islander communities to ensure that what is done will indeed meet indigenous needs and aspirations. And there must be adequate mechanisms for managing the implementation processes and ensuring that the impetus for reform is sustained.

The proposals fall into six major themes:

- The rights of Aboriginal and Torres Strait Islander peoples as citizens
- Recognition of their special status and rights as indigenous Australians and the achievement of greater self determination for Aboriginal and Torres Strait Islander peoples
- Ensuring that indigenous Australians are able to exercise their rights and share equitably in the provision of Government programs and services
- The protection of the cultural integrity and heritage of indigenous Australians
- Measures to increase Aboriginal and Torres Strait Islander participation in Australia's economic life.

As a starting point the report recommends that Governments agree to and legislate a broad set of *Principles for Indigenous Social Justice and the Development of Relations between the Commonwealth Government and Aboriginal and Torres Strait Islander peoples*.

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<sup>1</sup> Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures* (1995). Reproduced in [1996] *Australian Indigenous Law Reporter* 27. At: <http://www.austlii.edu.au/au/journals/AILR/1996/27.html>.

Adoption of this charter would underpin the further development and implementation of the specific proposals put forward in this report, guide all future relationships between the Commonwealth and indigenous peoples, and be capable of applying to the roles and responsibilities of other spheres of government as well.

Other proposals encompass:

- major institutional and structural change, including Constitutional reform and recognition, regional self-government and regional agreements, and the negotiation of a Treaty or comparable document
- overcoming inequities and inefficiencies in service delivery, including the achievement of genuine access and equity in Commonwealth mainstream programs and revised Commonwealth-State funding arrangements
- protection of rights through such means as recognition of customary laws, protection of intellectual and cultural property, and recognition of indigenous rights
- practical measures to enhance opportunities for economic development and to achieve other desirable objectives such as improved public awareness of indigenous cultures and indigenous issues.

Particular recommendations are made in respect of the following identified areas:

### **Rights**

- the reinforcement of access and equity provisions through legislation to ensure indigenous people can better access their citizenship entitlements
- an increased commitment to supporting international instruments which reinforce indigenous rights
- support for measures to define, recognise and extend indigenous rights including new initiatives in areas such as communal title and assertion of coextensive rights.

### **Recognition and Empowerment**

- promotion and advancement of the constitutional reform agenda
- indigenous representation in Parliament with interim arrangements for speaking rights by the ATSIC Chairperson
- processes to start work on compensation issues
- promotion of regional agreements as a means of settling social justice issues on a regional basis commencing with pilot studies
- recognition of a self government option for indigenous people within the framework of self determination
- support for initial work to develop a framework for a treaty and negotiation arrangements
- legislative recognition of the Aboriginal and Torres Strait Islander flags
- increased support for Public Awareness initiatives.

### **Citizenship Entitlements**

- reforms in Commonwealth State funding arrangements to make the States more accountable for general revenue assistance and to provide for an increased emphasis on Specific Purpose Payments
- implementation of recommendations relating to major reviews of the Aboriginal Education Policy (AEP), the National Aboriginal Health Strategy (NAHS), the Aboriginal Economic Development Policy (AEDP) and the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)
- a proposal for a national Aboriginal and Torres Strait Islander Housing and Infrastructure program.

### **Cultural Integrity and Heritage Protection**

- legislative reforms to strengthen heritage protection legislation and protect indigenous rights to cultural property
- providing for greater involvement in environmental decision making
- implementing the report of the Law Reform Commission on Aboriginal customary law
- support for extension of language programs and broadcasting initiatives.

### **Economic Development**

- fostering closer links with industry
- accessing Community Development Employment Projects (CDEP) Scheme as an entitlement and removing anomalies
- implementation of business training proposals of AEDP
- fostering regional economic development through inclusive involvement of Regional Councils
- further development of strategic business opportunities and resources for a stake in industry.

## **2. Chapter 4: Social Justice Report 1995<sup>2</sup>**

### **Constitutional change**

- That recognition of the unique place of Indigenous peoples in contemporary Australia be a fundamental principle in any national constitutional review and revision, and that this include recognising the right of Indigenous peoples to represent ourselves in negotiation of constitutional change with governments.
- That the Commonwealth Government, in consultation with the Council for Aboriginal Reconciliation, ATSIC, the Constitutional Centenary Foundation and the Aboriginal and Torres Strait Islander Social Justice Commissioner establish structures and processes of constitutional reform and national renewal which are building towards the new millennium and the centenary of the Constitution in 2001.

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2 M Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Australian Human Rights Commission (1995), pp 96-135.

- That Indigenous constitutional structures and processes provide for access by all sections of the Indigenous community through consultations and public forums to the development of positions of negotiations with governments. This will require sufficient resources for the preparation of information and consultation materials, as well as the equitable funding of forums or groups for the expression of diverse views.
- That structures and processes for Indigenous constitutional recognition and reform be directed not only to achieving specific rights but to continuing processes for the renewal of relations between Indigenous and non-Indigenous Australians.

### Regional agreements

- That the Australian Government endorses the option of regional agreements, where initiated by Australian Indigenous peoples, as a process for their greater recognition and empowerment through recognising land ownership and citizenship rights. Indigenous management, rights to lands, resources, seas and wildlife should be institutionally recognised in regional agreements—even where ‘ownership’ is not established.
- That extinguishment of native title should not be a pre-requisite for government negotiation and approval of a regional agreement. Regional agreements should be negotiated under section 21 of the *Native Title Act* or independently of that Act, at the option of the Indigenous regional negotiators.
- That the Australian Government funds trial projects in at least four regions—in northern and southern Australia—where communities resolve to pursue negotiated settlements on a regional basis.
- That the Australian Government funds a ‘Research and Resource Centre for Negotiating Indigenous Claims’ which monitors the trial projects and provides resource and research assistance to Australian Indigenous communities and organisations. This should include facilitation and training in negotiation and conflict resolution, encompassing conflict resolution with regions and organisations, cross-cultural conflicts and inter-governmental conflict.
- That the Australian Government report on political, financial and legal measures which can be used to facilitate State, Territory and local government involvement in regional agreements.
- That Commonwealth legislation be amended or enacted to allow and promote regional Indigenous corporations with the following functions:
  - represent regional organisations and communities in negotiating regional agreements
  - raise finances and hold government grants
  - hold communal title to land, assets and resources
  - hold non-communal title to land, assets and resources
  - engage in enterprises
  - participate in planning, environmental and resource management processes and land claims
  - participate in sustainable development strategies
  - provide regional services
  - engage in negotiating and providing self-government functions.

- That regional agreements must proceed on the basis that negotiations do not violate relevant international standards such as those articulated in the *Draft Declaration on the Rights of Indigenous Peoples*, *International Labour Organisation Convention 169* and the Biodiversity Convention and other human rights conventions. The Commonwealth Government should implement ‘bottom line’ conditions for negotiation based on such international standards.
- That, following trial projects, Indigenous organisations be funded for the negotiation of Agreements-in-Principle, and provided with interest free loans for the finalisation of agreements.
- That the Commonwealth Government and Aboriginal organisations investigate the expedited regional agreement processes being developed in British Columbia, Canada.
- That regional agreements be recognised through Commonwealth legislation. Constitutional reform proposals should provide constitutional recognition subject to clearly defined amendment processes.
- That the Commonwealth – and any involved State and Territory Governments – enter into implementation contracts, timetables and resource allocation to implement regional agreements.

#### **Reform of the funding of citizenship services for Indigenous peoples**

- That the Commonwealth Government affirm its commitment to establishing a direct fiscal relationship with Indigenous communities and organisations.
- That the Commonwealth Government initiate:
  - A comprehensive study by the Commonwealth Grants Commission of the potential application of the fiscal equalisation principle among Indigenous communities in Australia. Such a study to be undertaken in a manner which allows for the outcomes to be broken down into both States/Territories and regions
  - A specific reference to the Commonwealth Grants Commission to explore solutions to the enormous and inequitable capital infrastructure needs of Indigenous communities.

#### **International connections**

- The Parliament should establish a Human Rights Committee of members with relevant expertise and such a committee should conduct a public inquiry into the benefits to Aboriginal and Torres Strait Islander peoples and the wider Australian community of international Indigenous awareness and co-operation; and how to involve Australia and its citizens, especially Aboriginal and Torres Strait Islander peoples, in this burgeoning field of international relations. Subject to the establishment of a Human Rights Committee, the Joint Standing Committee on Foreign Affairs, Defence and Trade should conduct such an inquiry.

- That the Commonwealth Government provide the mandate and resources for an independent Aboriginal international Indigenous watch organisation. This could either take place through an expansion of the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, or could be established as an independent specialist Non-Government Organisation.
- A workshop on Indigenous marine policy issues and needs bringing Torres Strait Islander and Aboriginal representatives together with Coastal Sami, Inuit, Indian First Nations of Canada's Pacific coast, and South Pacific peoples, should be held. The workshop would also consider the usefulness and feasibility of an ongoing international Indigenous marine network of peoples and organisations.
- The Aboriginal and Torres Strait Islander Commission, the Council for Aboriginal Reconciliation, and the Aboriginal and Torres Strait Islander Social Justice Commissioner should consult with Indigenous organisations to develop a priority list of urgently required international comparative studies on issues identified in this report and elsewhere including macro- and micro-constitutional reform; regional agreements; inter-governmental relations internal to nation-states in respect of Indigenous policy and programs; self-government; land and sea rights; and Indigenous management of territory and resources.
- In respect of [the] recommendation above, a fund should be established under the joint management of ATSIC, the Council for Aboriginal Reconciliation, and the Aboriginal and Torres Strait Islander Social Justice Commissioner to carry out international comparative research on these and other urgent Indigenous policy issues.