

## **Northern Land Council**

### **Submission to the HORSCATSIA Inquiry into the Needs of Urban Dwelling Aboriginal and Torres Strait Islander People**

**October 2000**

#### **Summary of Recommendations**

**Recommendation 1:** That further analysis of the models for Indigenous public policy is undertaken by HORSCATSIA with the aim of developing bipartisan policy models with long-term structural outcomes, ultimately resulting in Indigenous self-management.

**Recommendation 2:** That HORSCATSIA calls on the Australian Government to reconsider its amendments to the Native Title Act 1993 in the light of the criticism by the United Nations Committee on the Elimination of Racial Discrimination (CERD), in particular the removal of the right to negotiate and permanent extinguishment of native title under Annexure 'D'.

**Recommendation 3:** That HORSCATSIA reiterates its recommendation that no changes to the Land Rights Act should take place without the consent of traditional Aboriginal owners and the Aboriginal people of the NT.

**Recommendation 4** That members of the stolen generation be provided with the necessary support and resources to enable them to reunite with their family, undergo a cultural education process, and establish links to country.

Land Councils should be adequately resourced to facilitate this process.

**Recommendation 5.** That a land acquisition program be established specifically for the people of the stolen generation, and their children, separate from both the Indigenous Land Fund and ATSIC's land acquisition program. Such land must only be acquired with the approval of its traditional owners.

**Recommendation 6:** That HORSCATSIA notes and endorses the inter-agency collaborative model employed in the NT Urban Social Problems project as an appropriate way for government and community agencies to deal with Indigenous issues.

**Recommendation 7:** That opportunities for economic independence via the "new economy" require significant research and examination to ensure that Aboriginal people are able to participate fully in such developments. Research should examine and report back on the need for equitable access to resources, opportunities for economic benefit, and protection of Indigenous rights.

## **Introduction**

The Northern Land Council (NLC) is a statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act); it is also a Native Title Representative Body under the *Native Title Act 1993*. The Land Council is charged, among other things, with the statutory responsibility to protect the interests of traditional Aboriginal owners and other Aborigines with interests in land in the NT.

The second report of Mr Justice Woodward for his Aboriginal Land Rights Commission recommended that land should be acquired for Aboriginal people living in urban areas of the NT on the basis of need. (paragraph 328, pp 63-64). Land Councils would have played a role in assessing land needs in towns and assisting with town planning. However this provision was dropped from the Land Rights Act as ultimately passed by the Fraser Government in 1976.

While their rights have not been recognised by the Land Rights Act, many urban-dwelling Aboriginal people have interests, particularly native title interests, in land in the NT, and as a result the NLC has a responsibility to represent them. It is on that basis that the NLC presents this submission.

## **Scope of the submission**

The terms of reference for this Inquiry are extremely broad. The “needs” of urban dwelling Aboriginal people are enormous: health, housing, education, infrastructure, land rights, economic opportunities, and access to justice to name but a few. There are many other agencies more expert than the NLC in commenting specifically on the delivery of services, so this submission will only deal with those issues briefly, seeking only to highlight the particular needs of the Northern Territory or to illustrate a more global point about service delivery models.

A major focus of this submission is on recognising the dispossession of urban-based people through the amendments to the Native Title Act 1993. Another key theme is service delivery and self-determination, with a focus on appropriate models for achieving improved social outcomes for urban Aboriginal people. Lastly, some consideration is given to the issue of opportunities for Aboriginal people to participate in the opportunities for economic independence provided by the “new economy.”

It is assumed that ATSIC and other specialist agencies will provide a comprehensive statistical overview of service needs, health indicators, educational levels, and other relevant issues.

The NLC does not consider it is helpful or appropriate to generalise, compare or distinguish arbitrarily between urban-based Aboriginal people and those living in rural or traditional settings. Aboriginal people, as a group, whether living in towns or in the bush, are the most disadvantaged people in Australia. Most urban-based people, however, have a further disadvantage of being less likely to be able to realise their rights to traditional land or their native title rights.

## 1. Service delivery policy and models

Debate over service delivery models has come full circle in Australia. In the 1970s Australian Federal government policy shifted away from assimilationist and prophylactic measures to a more holistic model based on self-determination. The policy development of H.C. Coombs and others in the 1970s influenced Federal Governments from Whitlam to Keating. The policy shift resulted in statutory recognition of land rights (in the Northern Territory in particular) and an increase in the amount of spending on services.

The failure to achieve outcomes on a range of key indicators has been erroneously blamed on the self-determination model, and therefore justified the abandonment of this model. Since 1996 the Howard Government's policies of "self-management" and "practical reconciliation" have seen a shift away from holistic models.

The NLC considers that the framework for the shift in policy since 1996 has been ill-conceived. Analysis of actual spending on Aboriginal services does not bear out claims that much money has been spent on Aboriginal people without any demonstrable outcomes. On the contrary, evidence exists which suggests that in large part the "failure" is not attributable to the holistic, self-determination models but governments' failure to properly facilitate self-determination coupled with inadequate funding. The Aboriginal and Torres Strait Islander Social Justice Commissioner reported in 1996 that per person spending on health was significantly less for Aboriginal people than for non-Aboriginal people. Nonetheless, the Howard Government almost immediately cut ATSIC's budget by \$400 million after its election in 1996.

In the Northern Territory, claims of misspent funds and inappropriate policy during the 1970s and 1980s have some validity, however the failures are the result of NTG funding decisions rather than Aboriginal organisations. The NT is funded through the Commonwealth Grants Commission (CGC) at a rate seven times that of NSW, yet the NTG has not provided adequate health, education, housing or infrastructure services. The NLC hopes that the current CGC Inquiry into Indigenous Funding will result in some scrutiny of the NTG's spending since self-government in 1978, in particular its spending of the untied grants it receives under the horizontal fiscal equalisation principle to provide comparable levels of government services to Aboriginal people.

Problems of the magnitude of the disadvantage suffered by Aboriginal people cannot be expected to be addressed in demonstrable outcomes within a three year election cycle. The levels of poverty, homelessness, illiteracy and ill-health suffered by Aboriginal people will require generations before they reach those of mainstream Australia. The failures over the past twenty years to achieve parity between Indigenous and non-Indigenous Australians cannot be attributed to holistic, self-determination policy models. These failures are not an argument for reducing spending, reducing the recognition of Indigenous rights, and fragmenting the management of services and programs. There is, however, a strong argument for examining how and why self-determination has been impaired, and developing mechanisms to give adequate expression to self-determination.

Research from other countries with similar histories indicates that the self-determination/rights-based model is the most appropriate for effecting long-term

change for Indigenous people. For example, in relation to health, Dr Peter Scrimgeour from the Menzies School of Health Research has published a comparative study of indigenous involvement in health services in New Zealand, Canada, Norway and Australia. He found a number of common factors which can be seen to contribute towards an improvement of the health status of Indigenous people. In particular, he found that the practice of splitting the role of the funder and the provider led to better health services and outcomes.

In practice, this means that the agency providing the money should not be the one providing the service, and in the cases he examined this meant that government funding was used by community-controlled health providers<sup>1</sup>. While Scrimgeour cautioned that such role splitting could be seen as attempts by government to cut costs and avoid responsibility, it can be used by community health groups to their advantage:

If transfer of resources for health care from Government to communities only means a change in the bureaucracy which administers and controls the spending of resources, to achieve goals set outside the community, it is perhaps unlikely that this will sufficiently change the conditions of welfare colonialism to result in significant improvements in physical and social health. It is only when the transfer is conducted with the political will on both sides to include real control of health programs in the transfer, that the expected improvements will be likely to occur.<sup>2</sup>

Further to the holistic model, the Human Rights and Equal Opportunity Commission's inquiry into the removal of Aboriginal children from their families found that significant emotional, cultural, social and ultimately economic dysfunction resulted from the "stolen generation" policies. The separation of children from their families and culture has had "intergenerational effects" which cannot be easily categorised into one service delivery area, nor can improved results be expected within a Federal or state election cycle:

Social justice measures taken by governments should have special regard to the inter-generational effects of past removals. Parenting skills and confidence, the capacity to convey Indigenous culture to children, parental mental health and the capacity to deal with institutions such as schools, police, health departments and welfare departments have all been damaged by earlier policies of removal.

Unless these conditions are altered and living conditions improved, social and familial disruption will continue. Child welfare and juvenile justice law, policy and practice must recognise that structural disadvantage increases the likelihood of Indigenous children and young people having contact with welfare and justice agencies. They must address this situation.<sup>3</sup>

The NLC submits that the current government policies of splitting Aboriginal service delivery into separate program areas with their own separate bureaucracies, accountabilities and indicators are not successful. Further, the concept of "practical reconciliation" which appears to mean improved service delivery without a social

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<sup>1</sup> Scrimgeour, P., *Community Involvement in Health Services for Indigenous Peoples of Canada, Norway and New Zealand*, Menzies Occasional Papers 2/95, Menzies School of Health Research Darwin 1995, p. 47

<sup>2</sup> Scrimgeour, P., *Community Involvement in Health Services*, p. 49.

<sup>3</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home*, 1997, chapter 25

justice criterion has not resulted in better outcomes or even more money being spent on Aboriginal people's dire needs but has simply been a political tool with which to blame the victim. Public policy needs to move beyond short-term political goals to the reality of deep and complex disadvantage suffered by urban Aboriginal people.

*Recommendation 1: That further analysis of the models for Indigenous public policy is undertaken by HORSCATSIA with the aim of developing bipartisan policy models with long-term structural outcomes, ultimately resulting in Indigenous self-management.*

## **2. The most dispossessed: native title issues for urban Aboriginal people**

As discussed in the Introduction, the Land Rights Act does not allow for claims within town boundaries or on the basis of the needs of urban people. Recent amendments to the *Native Title Act 1993* (NTA) have further exacerbated the disadvantage suffered by urban people in relation to their rights and interests in land. Prior to the amendments of 1998, Aboriginal people had a "right to negotiate" under the NTA. This right arose from the historic and generous agreement which Aboriginal people made with the Australian Parliament whereby Aboriginal people agreed to the validation of land title made invalid by the *Mabo no. 2* decision of 1992. In return for this, Aboriginal people were given the right to negotiate over developments on crown land. The effect of the validation of titles was greatest in urban areas where the highest levels of development had occurred. The 1998 amendments mean that native title holders no longer have the right to negotiate over acquisition or impairment of their native title rights; instead they are entitled to some degree of compensation. This has further dispossessed urban Aboriginal people of their land.

The loss of the right to negotiate over development within town boundaries has further disempowered urban Aboriginal people. The importance of the right to negotiate is that it brings Aboriginal people back into the centre of discussions about their land. They are in a position to negotiate actively over protection of their sites, possible compensation, jobs and other economic opportunities. Taking away that right for urban areas and replacing it with a right to compensation under the amended NTA again pushes Aboriginal people back to the margins, once again passive while others make decisions over the use of their land.

Another effect of the 1998 amendments was to permanently extinguish native title in specific areas of land, scheduled under the Act at Annexure 'D', again disproportionately affecting urban Aboriginal people.

On 24 March 2000, the United Nations Committee on the Elimination of Racial Discrimination (CERD), criticised recent policy decisions and lack of action in Indigenous affairs in Australia, focusing in particular on the amendments to the NTA. The Australian Government's response to this criticism has been to criticise the UN committee system and withdraw permission for UN committee delegations to visit Australia.

*Recommendation 2: That HORSCATSIA calls on the Australian Government to reconsider its amendments to the Native Title Act 1993 in the light of the criticism by the United Nations Committee on the Elimination of Racial Discrimination (CERD),*

*in particular the removal of the right to negotiate and permanent extinguishment of native title under Annexure 'D'.*

### **3. Land Rights under threat**

The NLC is deeply concerned by recent suggestions that the Federal Government is preparing to implement some or all of the recommendations of the Reeves Review of the Land Rights Act. Prime Minister John Howard said in parliament on 5 October 2000 that the Federal Government would be “carefully guided” by the recommendations of the Reeves Review.

As HORSCATSIA’s thorough examination of the Reeves Review in 1999 found, many of his recommendations are deeply flawed and would drastically reduce the rights of Aboriginal people. Most of the affected people are residents in rural or remote areas, but there are a significant minority of urban dwellers who retain rights to their traditional lands outside town boundaries.

In the case of the traditional owners of Darwin, the Larrakia people have few opportunities to have their rights recognised following the NTA amendments. However, as a coastal people, they traditionally regarded the land and seas as one and have continued to maintain their links with the sea and its resources. Current proposals to wipe out the rights of traditional owners to the seas (bays and gulfs) and the littoral zone (intertidal zone) would not only require “just terms” compensation (for the acquisition of a recognised property right) but would also eliminate one of the few avenues left for the Larrakia to exercise their land rights. These matters are currently before the courts and should not be disposed of by legislative change.

*Recommendation 3: That HORSCATSIA reiterates its recommendation that no changes to the Land Rights Act should take place without the consent of traditional Aboriginal owners and the Aboriginal people of the NT.*

### **4. Stolen generations**

Of the urban Aboriginal diaspora, the most dispossessed tend to be those who have suffered forcible separation from their families and have as a result lost their link with language, culture and land.

The failure of the current Federal Government to acknowledge the extent of the problems suffered by the Stolen Generations is an ongoing issue for a large number of urban-dwelling Aboriginal people. Funding for “link-up” programs and family reunions is not an adequate response to the wide-reaching findings of the HREOC report on the Stolen Generations.

The issue of the Government’s refusal to make a national apology, coupled with the lack of compassion in dealing with practical reconciliation of the intergenerational effects of past government policies, has left the Stolen Generations focused on fighting increasingly tragic and bitter court battles to establish some legal responsibility for their plight. Appropriate processes, such as an alternative dispute resolution tribunal to replace the adversarial and litigious process of stolen generation compensation claims are needed above all.

A central problem for the NLC, given its statutory functions, and members of the stolen generation, is the limited capacity of members of the stolen generation to establish rights to land under existing land claim and native title legislation. There is no doubt that the past policies of removal and separation have in the majority of cases, seriously impaired the capacity of stolen generation people to establish legal rights to land.

Members of the stolen generation must be provided with the necessary support and resources to enable them to not only contact family members, but to learn cultural practices and language and to establish their links back to country.

The NLC recognise that the process of cultural education can be slow. A land acquisition program should be established to allow members of the stolen generation to purchase back some of the land that has been lost to them. Land should be purchased with the involvement and approval of the relevant traditional owners.

Members of the Stolen Generations whose traditional land is in urban areas, for example, the Larrakia, have suffered additional “practical” discrimination in that their rights under the amended NTA and the Land Rights Act have been diminished disproportionately compared to those whose traditional country is outside urban areas.

*Recommendation 4 That members of the stolen generation be provided with the necessary support and resources to enable them to reunite with their family, undergo a cultural education process, and establish links to country.*

*Land Councils should be adequately resourced to facilitate this process.*

*Recommendation 5. That a land acquisition program be established specifically for the people of the stolen generation, and their children, separate from both the Indigenous Land Fund and ATSIC’s land acquisition program. Such land must only be acquired with the approval of its traditional owners.*

## **5. Urban Social Problems**

Urban Indigenous community organisations have been concerned for many years over issues related to urban social problems relating to Indigenous “itinerants” throughout the NT.

In the Darwin and Palmerston region, there are a number of people, many of them Indigenous, from remote communities living “an itinerant lifestyle”. There are concerns about alcohol use and the health, well-being and social behaviour of “itinerants”. Also of concern is the effect of this group’s behaviour on themselves and the lives of their relatives and acquaintances that reside in urban areas.

The NLC, in conjunction with ATSIC, the North Australian Aboriginal Legal Aid Service, the Aboriginal Medical Services Association of the NT and the Larrakia Nation is currently working on a research project which has been jointly funded by ATSIC and the Northern Territory Government. The project will:

1. Collate and analyse all of the existing documentation on the issue.
2. Consult widely with organisations that are providing services to Indigenous “itinerants”.

3. Undertake consultation with affected groups.
4. Consult widely with the “itinerant” population to collect information including:
  - The composition of the various groups
  - Originating communities
  - Reasons for being in Darwin
  - Lifestyles adopted in Darwin, income, food, daily patterns
  - Reasons for adopting the lifestyle
  - Alternative options and willingness to choose alternatives

The development and management of this project is an excellent example of inter-agency and community-based approaches to Indigenous issues. The management is in the hands of the community organisations, and the traditional owners of Darwin, via the Larrakia Nation, will play a major role.

The tender to carry out the research has not yet been awarded. The NLC would be happy to provide HORSCATSIA with further information as the project progresses.

*Recommendation 6: That HORSCATSIA notes and endorses the inter-agency collaborative model employed in the NT Urban Social Problems project as an appropriate way for government and community agencies to deal with Indigenous issues.*

## **6. Opportunities for economic independence**

### **6.1 Old economy**

Land and resource exploitation has been the focus of the Australian economy for the past two centuries and the colonists’ hunger for more and more land resulted in the incremental dispossession of the traditional Aboriginal owners.

The Land Rights era heralded new opportunities for Aboriginal people to have those rights recognised and to use their land base for economic advancement. However, the nature of the mining industry meant that in general Aboriginal people have been passive in the exploitation of the mineral resources of their land. Further, Land Rights legislation did not make provision for capital or training to assist people to utilise their land for economic independence. One of the few industries in which Aboriginal people have had considerable success historically has been pastoralism, however it is now recognised that the fragile environment of the tropical savanna and central Australia, and the marginal economic viability of most pastoral activities, creates major limitations for the sustainability of this industry.

In recent years, the NLC has been facilitating traditional Aboriginal owners to become joint venturers in developments on their land. This strategy has also been employed successfully on behalf of the Larrakia people of Darwin with respect to the Wickham Point liquid natural gas plant.

However it is important for both land-holding and dispossessed Aboriginal people to recognise that the economy is undergoing radical changes and that the new path to economic independence involves more than just ownership of land and exploitation of resources. It is equally vital that governments and policy-makers recognise that



regardless of the changes in the structure of the Australian and international economies, land will remain a crucial social, cultural and economic issue for Aboriginal people.

## **6.2 New economy**

It is still unclear exactly how the “new economy” will be shaped but some of its central elements are clear:

- Access to telecommunications resources
- Access to knowledge and information technology
- Ownership or exploitation of intellectual property

At the moment, Aboriginal people are well behind the rest of Australia in terms of access to telecommunications resources and information technology. Remote-dwelling and urban Aboriginal people are probably equally disadvantaged in terms of the new economy. One “new economy” resource which Aboriginal people do hold is intellectual property. Knowledge of the environment, seasons, plants, bush foods and terrain is held by both rural and urban dwelling Aboriginal people. As the information economy intersects with the growth of sustainable development policies, information on preserving biodiversity, managing environments and sustainable resource exploitation will become more valuable. Aboriginal people need to be in a position to maximise their opportunities in these fields, not merely as passive sellers of a resource, but as managers and exploiters of their own “information capital.”

Much more research is needed into the opportunities and challenges provided by the new economic world order. Issues such as equitable access to telecommunications resources and technology need to be examined at a national level. Recognition of intellectual property also needs to be reviewed in the light of the challenges posed by the information revolution.

*Recommendation 7: That opportunities for economic independence via the “new economy” require significant research and examination to ensure that Aboriginal people are able to participate fully in such developments. Research should examine and report back on the need for equitable access to resources, opportunities for economic benefit, and protection of Indigenous rights.*