



MELBOURNE
CATHOLIC COMMISSION FOR
**JUSTICE,
DEVELOPMENT
& PEACE**

**Submission to the Senate Select Committee on the
Administration of Indigenous Affairs**

August 2004

Introduction

The **Melbourne Catholic Commission for Justice, Development and Peace (MCCJDP)** welcomes the Inquiry into the Administration of Indigenous Affairs.

The MCCJDP's submission will address the following terms of reference of the Inquiry in the general discussion below:

- a) The provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;
- b) The proposed administration of Indigenous programs and services by mainstream departments and agencies.
- c) Related matters.

In particular, the MCCJDP will raise the issue of self-determination within international law and its relevance to the provision of an Indigenous representative body to reflect the values and aspirations of Indigenous Australians.

About MCCJDP

The Melbourne Catholic Commission for Justice, Development and Peace

(MCCJDP) aims to help educate and give leadership to the Catholic and wider community in the gospel message of justice and in the social teachings of the Church. The Commission's Charter requires it to work for justice in public, local and national structures. It seeks to achieve these ends through research, analysis, working with parish networks, public forums, in schools and in the media. It actively seeks to explore ways that social justice can be improved in society and in the performance of mechanisms that have a role in public life. The MCCJDP has raised the issue of violations of human rights of indigenous Australians in a variety of fora including the media, the lobbying of parliamentarians and producing documents.

Catholic Social Teaching

In addition to the promotion of and respect for universal human rights and standards that will be referred to throughout this submission, the MCCJDP uses the principles of Catholic social teaching to test the justness of public policy. The dignity of the human person is affirmed by the right to be involved in the decision making process of policies and programs that bear on their lives. This Catholic social principle of subsidiarity was referred to by Pope John Paul II when he voiced his concern that: "A community of a higher order should not interfere with the life of a community of a lower order, taking over its functions. In case of need it should, rather, support the smaller community and help to coordinate its activity with activities in the rest of society for the sake of the common good".¹

Pope John Paul II laid out the Catholic Church's views towards Australian Aborigines and the wider community in 1986.² He said that for Aborigines, "The discrimination caused by racism is a daily experience." The Pope challenged assertions that Aborigines should not be expecting and requesting special consideration in the Australian polity, on the basis that they were dispossessed:

¹ Centesimus Annus, The Hundredth Year, John Paul II, 1991

² Address given by His Holiness Pope John Paul II at the meeting with Aboriginal and Torres Strait Islander people at Alice Springs on 29 November 1986, St Paul Publications, Homebush, 1986.

Let it not be said that fair and equitable recognition of Aboriginal rights to land is discrimination. To call for the acknowledgement of the land rights of people who have never surrendered those rights is not discrimination. Certainly whatever is done cannot be undone. But what can now be done to remedy the deeds of yesterday must not be put off till tomorrow.

The Pope called for legal arrangements to be made between indigenous people and Australian Governments:

The establishment of a new society for Aboriginal people cannot go forward without just and mutually recognised agreements with regard to these human problems, even though their causes lie in the past. The greatest value to be achieved by such agreements, which must be implemented without causing new injustices, is respect for the dignity and growth of the human person.

Representation and self-determination

The right of self-determination is a fundamental principle of human rights and international law. Indigenous peoples from many countries, including Australia, and many Governments within the United Nations have worked upon the standards and principles contained in the UN Draft Declaration on the Rights of Indigenous Peoples.³ While not yet proclaimed by the UN, it represents the aspirations of indigenous peoples and provides benchmarks for best practice by Governments. In particular, the MCCJDP would like to draw the Committee's attention to the following articles:

Indigenous people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 3.)

³ 'Draft Declaration on the rights of Indigenous Peoples' Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45 Session, Report on the Working Group on indigenous populations on its 11th session (November 2000)

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision making in matters which affect their lives and destinies through representatives chosen by themselves in accordance with their own procedures as well as to maintain and develop their own indigenous decision making institutions. (Article 19.)

Indigenous peoples have a specific form of exercising their right to self determination, have the right to autonomy or self government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions. (Article 31.)

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements... (Article 36).

Reforming administration of Indigenous affairs policy

Australia has a duty to pursue social justice and economic development for all Aboriginal and Torres Strait Islander peoples and to urgently address the current unacceptably high levels of systemic disadvantage. There is no doubt that there need to be practical improvements to Indigenous housing, health, education and equal employment and this duty is recognised by the Government.

However, the Howard Government's notions of 'practical reconciliation' are flawed. The obligation to ensure enjoyment of economic and social rights is a duty owed by the government *in addition* to the need to achieve reconciliation. Reconciliation requires recognition of the rights that Aboriginal and Torres Strait Islanders have as the first people of this country, including recognition of the rights to land, self-determination and the practice of indigenous culture. As all human rights are indivisible, the prospects of

Indigenous Australians enjoying their rights to economic development, health and education are fundamentally undermined while the Federal Government continues to deny their right to self-determination.

Even if one accepts that the measure of reconciliation is the achievement of equality of social and economic opportunities for Indigenous Australians, it is clear that the Federal Governments policies are simply not working. The 2002-2003 Australian Human Rights Register, coordinated by the Melbourne Catholic Commission for Justice, Development and Peace (MCCJDP), found that practical reconciliation is failing Australia's indigenous peoples.

A report by the Centre for Aboriginal Economic Policy Research (CAEPR) in 2003 compared the performance of the Keating and Howard Governments on the absolute improvement in well being of Indigenous Australians and improvement relative to non-Indigenous Australians. The Keating Government pursued parallel 'rights' and 'practical' policies while the Howard Government's emphasis was entirely on 'practical reconciliation' policies. The results showed little difference in 'practical' outcomes after seven years of 'practical reconciliation' policies but a further widening of the gap in well being between Indigenous and non-Indigenous Australians.

The MCCJDP found in its Human Rights Register that Indigenous Australians continue to suffer the worst forms of disadvantage in 2002-2003. For example:

- life expectancy for Indigenous Australians is 76% of that for other Australians (i.e.. approximately 20 years less);⁴
- unemployment among Indigenous Australians is almost 4 times higher than the average;⁵
- the median family income is about two-thirds of the rest of the community;⁶
- infant mortality is up to three times higher for Indigenous children, which is remarkably similar to infant mortality rates in developing countries such as Uganda, Eritrea and Bangladesh;⁷ and

⁴ Australian Council of Social Service, *Budget Priorities Indigenous Australia* (23 Dec 2003).

⁵ Australian Council of Social Service, *Budget Priorities Indigenous Australia* (23 Dec 2003).

⁶ Australian Council of Social Service, *Budget Priorities Indigenous Australia* (23 Dec 2003).

- Indigenous women are imprisoned at alarming rates, higher than any other group in society (for example, Aboriginal women represent 80% of all women in prison for public drunkenness).⁸

Clearly, ‘practical reconciliation’ has failed to improve the lot of many Indigenous Australians.

Evidence from Australia and overseas demonstrates that both effective mainstream and Indigenous-specific service delivery is required and that the critical elements in achieving successful outcomes are effective Indigenous involvement in decision-making and the existence of capable and culturally appropriate Indigenous institutions of governance.

New Indigenous representative structure

There must be a sustainable, independent National Indigenous Representative Body that:

- reflects the aspirations and values of Aboriginal and Torres Strait Islander peoples;
- is open, transparent and accountable to the Aboriginal and Torres Strait Islander peoples;
- is established with the informed consent of Indigenous peoples through inclusive processes that acknowledge their diversity and traditional authority structures.

With the option of reforming ATSIC's structure to address its acknowledged deficiencies having been rejected, priority must be given to establishing a new independent National Indigenous Representative Body. The structure of this body needs to address deficiencies outlined in the Review including an increased focus on regional and local roles, and issues of transparency and accountability.

This body should have primary roles in representation and advocacy, be the principal source of Indigenous policy advice to government, and have control over the provision of Indigenous-specific services. Such a body will need to be adequately resourced if it is

⁷ Edmund Rice Centre, *Indigenous Infant Mortality: An Australian Health Crisis* (30 September 2003)

⁸ ‘Black Affairs No Longer “Priority”’, *The Australian*, (21 March 2003).

to function effectively. To this end, the assets of ATSIC should be preserved for transfer to this body once it has been duly constituted.

Consistent with the principle of subsidiarity, the MCCJDP believes it is imperative that the details of the model and structure for such a body be negotiated with Indigenous peoples and should only be determined on the basis of their informed consent.

Recommendations

- 1. The committee recommend there be a sustainable, independent National Indigenous Representative Body that is established through the informed consent of Indigenous peoples through inclusive processes.**
- 2. That both mainstream and Indigenous-specific service delivery be upheld on the basis of being responsive to and representative of Indigenous community and cultural needs.**
- 3. That the current assets of ATSIC be preserved for transfer to the new body.**