

# CHAPTER 1

## INTRODUCTION

### Background and Reference to the Committee

1.1 On 18 March 1999 the United Nations Committee on the Elimination of Racial Discrimination (the CERD Committee) published its decision 2(54) on Australia, in which it expressed concern about 'the compatibility of the Native Title Act, as currently amended' with Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (the CERD). That decision is reproduced as Appendix 3 of this report.

1.2 On 22 March 1999 the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) addressed a submission to the Parliamentary Joint Committee advocating that Australia should 'freeze' the implementation of the *Native Title Amendment Act 1998*. NAILSS also advocated an inquiry by the Committee into the removal of discrimination from the native title legislation. The NAILSS submission is reproduced at Appendix 4 of this report. On 31 March the Committee agreed to respond to NAILSS when the Senate had considered a motion to inquire into the CERD report.

1.3 Subsequently, on 29 April 1999, the following motion was debated in the Senate:

That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by the first sitting day in August 1999:

Whether the *Native Title Act 1993*, as amended, is consistent with:

- (a) Australia's international legal obligations, in particular the Convention on the Elimination of All Forms of Racial Discrimination; and
- (b) the *Racial Discrimination Act 1975*, and the principles underlying it.

1.4 Following debate the motion was lost. On 30 June 1999 the Committee resolved to write to the Attorney-General, advising him of the NAILSS request.

1.5 The Attorney-General responded in a letter dated 25 August 1999; that letter is reproduced as Appendix 5 of this report. The Attorney-General made the same argument as had been put to the Senate on 29 April, that the native title amendment legislation had been subjected to extensive committee scrutiny prior to being passed:

Due to the fact that the Australian Government is still making representations to the CERD Committee, and that there was significant Parliamentary and community scrutiny of native title proposals at the time of the passage of the *Native Title Amendment Act 1998*, I do not believe that

it is appropriate or necessary for the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund to hold an inquiry into the CERD report on the native title legislation.

1.6 On 1 September 1999 the Committee resolved to seek a briefing from the Attorney-General concerning developments in the matter. It wrote in that regard on 21 September. However, following the Senate's reference of the matter to the Committee the Attorney-General informed the Committee that rather than his giving such a briefing, his department would be making a formal submission to the inquiry.

1.7 On 9 December 1999 the Senate referred the findings of the CERD Committee on the *Native Title Act 1993*, as amended by the *Native Title Amendment Act 1998*, to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, for inquiry and report by the end of the second sitting week in April 2000. (The full terms of reference are set out at the beginning of this report.) The reporting date was subsequently extended to 28 June 2000.

### **Conduct of the Inquiry**

1.8 The Committee advertised the inquiry in the *Financial Review* on 17 December 1999, *The Weekend Australian* on 18 December 1999 and the *Koori Mail* on 12 January 2000. The Committee wrote to a number of organisations and individuals, seeking written submissions. The Committee received 33 submissions. All submissions are listed in Appendix 1. Copies of submissions were made available on request. A number of those making submissions also provided the Committee with copies of their submissions to the CERD Committee.

1.9 The Committee held public hearings in Canberra on 17, 22 and 23 February, and 9 and 13 March 2000. A list of witnesses who gave evidence to the Committee at public hearings, and the dates on which they were heard, is set out in Appendix 2.

1.10 The Committee also attempted to make contact with members of the CERD Committee. Invitations were sent to the Chairman of the CERD Committee, Mr Mahmoud Abdoul-Nasr, and the Country Rapporteur for Australia, Ms Gay McDougall, inviting them to participate in a videoconference with members of the Committee. Unfortunately, the Committee did not receive a response from either the Chairman or Ms McDougall prior to the proposed date for the videoconference lapsing.

### **Acknowledgments**

1.11 The Committee wishes to thank all those who contributed to the inquiry by preparing written submissions, by giving oral evidence, by providing additional information and material where requested or by assisting with arrangements for public hearings.