

As a Matter of **FACT**

**Answering the
myths and
misconceptions
about
Indigenous
Australians**



ABORIGINAL AND
TORRES STRAIT
ISLANDER
COMMISSION

SECOND EDITION

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for e w o r d

It is almost a year to the day since the first edition of this important publication was launched.

Of this first edition many thousands have been sold or given away, proving that there is a solid and growing demand for real information on Aboriginal and Torres Strait Islander affairs. It has been one of ATSIC's most successful publications.

AS A MATTER OF FACT is a guide to reconciliation, a unique collection of facts and interpretations across a wide range of topics covering the historical experiences and current status of the First Australians.

The first edition has been used as a resource from schools to prisons.



This new edition follows the same format as the old. Each topic takes as its starting point one of the more common misconceptions or resentments concerning Indigenous Australians or government programs of assistance to us.

It shows why these perceptions are built on myth, not fact.

The new edition has been updated to incorporate a number of developments over the last year.

In February last year the 'Wik' and native title debates were still raging, and the Government's amendments to the Native Title Act making their tortuous way through Parliament.

In February this year this particular source of conflict — and generator of new myths — may be partially behind us, though native title is not a closed issue for us.

At the same time we now face further battles, not least over possible changes to the Australia's most significant land rights legislation, the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Concerns about 'unfair' benefits to Indigenous students have led the Government to abolish ABSTUDY in all but name by making payments under the scheme the same as for mainstream equivalents.

Some light has been cast on what had been a 'speculative' area — how much money is actually spent on Aboriginal health. The *Deeble* report shows that the 'wasted millions' on Aboriginal health are, as we have always known, a myth.

Like its predecessor, this publication argues that not all differences in treatment are discriminatory.

Equality does not mean identical treatment. Special measures are sometimes required to fix inequality and to help members of disadvantaged groups enjoy their full human rights.

Conversely, policies that do not take into account the cultural, social, economic and demographic characteristics of the Indigenous population are discriminatory.

The first edition demonstrated that Australia needs resources such as AS A MATTER OF FACT.

If, as the Government has indicated, reconciliation has become a priority national goal for next year or the year after, then I urge all my fellow Australians to read this book.

We won't have reconciliation without understanding. We won't have reconciliation if Aboriginal affairs remain a focus of resentment, contempt, distortion and breath-taking double standards.

There has been too much of this in the past.

But my faith in my fellow Australians remains unshakeable. I look forward to a future where knowledge and empathy have banished prejudice, where fact has banished politically convenient fictions.

A handwritten signature in dark ink, appearing to read 'Gatjil Djerrkura'.

Gatjil Djerrkura
Chairman, ATSIC

February 1999

First Australians



Australia has two Indigenous peoples — Aboriginal people and Torres Strait Islanders. Together we number 352,970, according to figures from the 1996 Census, and represent about 2 per cent of the total population of Australia. At the Census, 28,744 people said they were of Torres Strait Islander descent and a further 10,106 people said they were both Aboriginal and Torres Strait Islander.

Historically and to this day, Aboriginal people have lived on mainland Australia, Tasmania and many of the continent's offshore islands. Torres Strait Islanders come from the islands of the Torres

Strait between the tip of Cape York in Queensland and Papua New Guinea. Since World War II many Torres Strait Islanders have moved to the mainland, principally for economic reasons. About 80 per cent of the Torres Strait Islander population now resides outside the Torres Strait.

Ethnically and culturally Aboriginals and Torres Strait Islanders are distinct peoples. We have also had different histories since European settlement. In all but the more remote areas of Australia, Aboriginal groups were dispossessed of their land piece by piece. The Torres Strait was annexed by Queensland in 1879, and, other than in the establishment of settlements such as Thursday Island, the Islanders were not dispersed from their homelands. Until the modern era, however, the people of the Torres Strait were, like Aboriginal people, subject to restrictive and paternalistic legislation that denied them their citizenship rights. Today the social indicators for Torres Strait Islanders — in education, health, employment — are similar to those for Aboriginal people.

This publication is about both of Australia's Indigenous peoples. But, as Aboriginal people form the majority of the Indigenous population and historically occupied far more of the land mass of Australia, in some of the pages that follow the text deals mainly with the experiences of Aboriginal people.



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My grandfather saw rights to land being trampled by the hooves of cattle, rights to fair treatment being strangled by iron neck-chains and rights to life being dispensed with the muzzle of a gun.

He lived in that period of history which people now say is so far in the past it should be forgotten. I say it should not be the subject of guilt — a wasted emotion — but of honesty, a reminder of what has happened, in order that the thinking behind those events does not have a legitimate place in the present.

Patrick Dodson, *Sydney Morning Herald*, March 1997

How, then, do we deal with the Aboriginal dead? White Australians frequently say that 'all that' should be forgotten. But it won't be. Black memories are too deeply, too recently scarred. And forgetfulness is a strange prescription coming from a community which reveres the fallen warrior and emblazons the phrase "Lest We Forget" on monuments throughout the land. If the Aborigines are to enter our history 'on terms of most perfect equality' ... they will bring their dead with them and expect an honoured burial ... If we are to continue to celebrate the sacrifice of men and women who died for their country can we deny admission to fallen tribesmen?

Henry Reynolds, *The Other Side of the Frontier*, 1981

For white Australians to cut ourselves off from the destruction of Aboriginal society is also to sever the ties that bind those born this century to the pioneers or the Anzacs, since none of us nurtured grain at Parramatta, discovered gold at Mount Morgan or held the Germans at Amiens. By what measure of fair dealing can one generation lay claim to the virtues of its forebears but erase any stain from their vices?

Humphrey McQueen, *24 Hours*, February 1997



History



Aboriginal and Torres Strait Islander people naturally have a different perspective on Australia's history than that of many immigrant Australians. What Europeans call 'settlement', we call 'invasion'. And we point to many past events and policies which undermine Australia's image of itself as a haven of tolerance and fairness. A proper acknowledgment of history is basic to understanding the present circumstances and claims of Indigenous Australians. Guilt is not a useful tool for reconciliation. An understanding of our shared history is.



“Aboriginal history is not Australian history.”



The fact is that over recent decades historians have been revising Australia's history to include an account of the 'frontier', of the struggle for land waged between Aboriginal groups and Europeans over a period of some 150 years. Important too is the recognition now given to the complex and productive relationship that we had, and continue to have, with our country.

As Australia's history was once written, Aboriginal people were mere wandering and 'primitive' tribes who naturally and inevitably gave way to more 'advanced' and industrious European settlers. The Indigenous perspective was not taken into account. In his 1968 Boyer Lectures, anthropologist W.E.H. Stanner described this state of affairs as 'the Great Australian Silence'.

More than 50,000 years of human history

This continent has a human history estimated at between 50,000 to 150,000 years old. Aboriginal people are representatives of the longest surviving cultures in the world.

Aboriginal Australia was a pattern of localities covering the entire continent. Groups hunted and gathered over areas defined by custom. Particular pieces of land were owned by particular groups. The land was not just a source of sustenance, but a materialisation of the journeys of the creative Ancestors. It was the basis of spiritual life and, in its own way, a religious text. Systems of land tenure were intimately bound up with spiritual attachment and notions of custodianship.

Some 200–250 different Australian languages were spoken and even more dialects. Though all groups lived by hunting and gathering and had a land-based spirituality, details such as kinship systems, artforms and technologies differed as would be expected in a continent with environments ranging from dense rainforests to deserts. There was a great deal of communication between neighbouring groups. Many people would have spoken more than one language, and certain valuable resources were exchanged over long distances.

Off the northern-most tip of Queensland the islands of what is now called the Torres Strait were inhabited by people who are more closely related, culturally and ethnically, to their New Guinean neighbours.

Just how many people lived in Australia before European contact is unknown, but estimates range from 300,000 to more than 1 million. Many scholars now accept a figure of at least 750,000.

The frontier

What we call the 'invasion' of our country began at Sydney Cove in 1788, when the First Fleet arrived from Britain. From the first colony, settlement spread piecemeal across the continent. Some Aboriginal groups in the remote north or centre might not have seen a white person until the 1930s or even later.

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The spread of British settlement was accompanied by a drastic decline in the Aboriginal population. Many people died of introduced diseases to which they had no immunity. The traditional land-dependent economy was destroyed as hunting grounds were taken over for grazing and agriculture. Aboriginal people became trespassers on their own land, with disastrous consequences for the maintenance of spiritual life and social systems.

Some Aboriginal people were attracted into white settlements. Others assisted settlers as guides, trackers, and stockmen. But the frontier, as it moved across the country, was generally a place of tension and sporadic bloodshed. In Tasmania and elsewhere the struggle became a full-scale land war, to which colonial authorities responded with declarations of martial law. On many occasions Aboriginals were deliberately killed by settlers or police. Police actions were often called 'dispersals'. The last recorded massacre was at Coniston in the Northern Territory in 1927, when policemen shot 17 Aboriginals. Typically the police were later exonerated at a public enquiry.

Terra nullius

From the beginning Australia was treated as a colony of settlement, not of conquest. Aboriginal land was taken under the legal fiction of *terra nullius* — that it belonged to no one. There were no official negotiations or treaties.

We regard *terra nullius* as the basic injustice on which modern Australia was built.

In 1992, in the *Mabo* judgment, the High Court of Australia overthrew this fiction when it said that Australia's common law recognised Indigenous peoples' property rights. This case was brought by the late Eddie Mabo and four other people from Mer (Murray Island) in the Torres Strait and took ten years to go through the courts. The final judgment had great symbolic as well as practical significance. It endorsed Indigenous perceptions of history.

While Australians today cannot be held responsible for the past, they have benefited from the dispossession of Indigenous people. As Justice Brennan wrote in the *Mabo* judgment, Aboriginal dispossession 'underwrote the development of Australia'.

Looking at our perspective on Australia's colonisation is essential to the production of a balanced picture, one that acknowledges not only the achievements of the settlers but also the terrible consequences of those achievements for Aboriginal Australians. And it helps us to understand how, as Justices Deane and Gaudron expressed it in the *Mabo* judgment, 'Aborigines came to be treated as a different and inferior people, whose very existence could be ignored in determining the legal right to occupy and use their traditional homelands'.

Are these unhappy people, the subjects of our King, in a state of rebellion or are they an injured people, whom we have invaded and with whom we are at war? Are they within the reach of our laws; or are they to be judged by the law of nations? Are they to be viewed in the light of murderers, or as prisoners of war? Are they British subjects at all, or a foreign enemy who has never yet been subdued and which resists our usurped authority and domination ... We are at war with them: they look upon us as enemies — as invaders — as oppressors and persecutors — they resist our invasion. They have never been subdued, therefore they are not rebellious subjects, but an injured nation defending in their own way, their rightful possessions, which have been torn from them by force.

Letter written to a Launceston newspaper, 1831



“There’s no point in dwelling on the past — what’s done is done.”



The fact is many Indigenous people remain affected by relatively recent experiences to which they were subjected because of their Aboriginality.

Australians who know the facts of the frontier may be unaware of what followed the defeat and dispossession of Aboriginal people over much of settled Australia. Survivors were subject to government policies that attempted variously to displace, convert, isolate and eventually assimilate them.

‘Protection’

The remnants of Indigenous groups were rounded up and moved, sometimes hundreds of kilometres away, to reserves or missions where they might be forbidden to speak their languages or practise their culture.

Laws were enacted to supervise relations between Aboriginals and other Australians. Using these laws various protection boards and native affairs departments were able to segregate a large part of the Aboriginal population. The people were treated as incompetent to manage their own lives and were subject to arbitrary rule by mission managers and police. Some reserves were revoked to cater for the needs of local farmers, and the people moved on — this has been called a ‘second dispossession’. Those outside reserves became ‘fringe-dwellers’ on riverbanks or the edges of towns.

During the first half of this century there existed a patchwork of differing State (and in the Northern Territory, Commonwealth) laws under which Aboriginal people might be prevented from entering hotels, from marrying without permission, from living within town boundaries. Aboriginal workers were often excluded from industrial awards, and wages were held in trust by police or mission managers who gave out ‘pocket money’ as they saw fit. The last of these Acts was not repealed until the 1970s.

‘Assimilation’

In 1937 the Commonwealth Government convened a conference with the States where it was agreed that the aim for those Aboriginal people not of ‘full blood’ should be their ultimate absorption in the wider population, with some form of continuing protection for the ‘semi-civilised’ people of the north and centre. In 1951 this policy was extended to all Aboriginal people. The aim of assimilationist policies was that the Aboriginal ‘problem’ would ultimately disappear — the people would lose their identity within the wider community.

But assimilation did not mean equal citizenship rights. It was promoted through a continuation of restrictive laws and paternalistic administration.

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The ‘stolen generations’

From the earliest days of British occupation, governments had allowed the removal of Aboriginal children from their families, particularly so called ‘half-caste’ children. The stolen children were raised in institutions or fostered out to white families, ‘for their own good’. The *Bringing Them Home* report concluded that, in the period from 1910 to 1970 when the practice was at its peak, between 10 and 30 per cent of Indigenous children were forcibly removed from their families and communities. No family was unaffected.

The personal and communal desolation caused by the break-up of families — an effect which transmits across generations — was expressed at the 1996 hearings of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. This inquiry, conducted by the Human Rights and Equal Opportunity Commission, produced the *Bringing Them Home* report in May 1997.

After 1967

Australia did not arrive at a consistent set of positive national policies for Indigenous people until the 1960s and 1970s.

In 1967 a referendum was overwhelmingly carried to remove two discriminatory references to Aboriginal people in the Australian Constitution. These constitutional changes allowed the Commonwealth to legislate for Aboriginal and Torres Strait Islander people, concurrently with the States. Before 1967 the Commonwealth's responsibility had been confined to the Northern Territory.

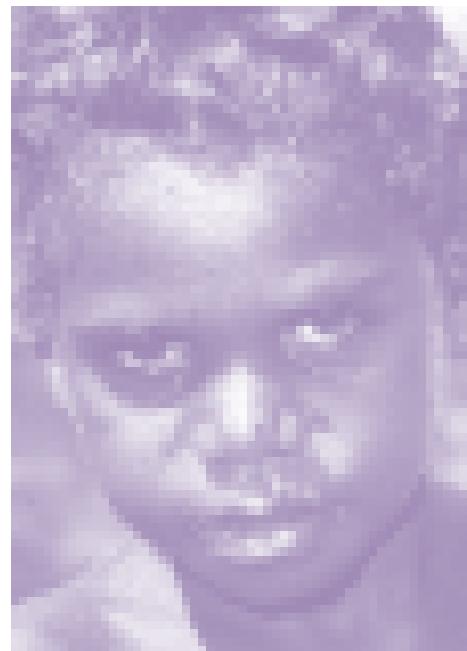
In the 1960s the policy of assimilation was tacitly abandoned, and in 1972 replaced with ‘self-determination’, defined as ‘Aboriginal communities deciding the pace and nature of their future development as significant components within a diverse Australia’.

The past in the present

Acknowledgment of these relatively recent aspects of Australia’s history is vital to understanding the present position of Indigenous people in Australian society. Dr Rosalind Kidd, who has researched the policies and practices of the Queensland administration, concludes that, for all of this century, ‘Aborigines have been the most intensively supervised sector of the population’ and ‘if we are to understand why present social indicators for Aborigines — health, education, employment, family cohesion — are so appallingly deficient, we must investigate how the machinery of government has created these circumstances’.

The past has set a pattern of incursion and dominance. It has entrenched ways of thinking about Aboriginal people that persist in the present. The Royal Commission into Aboriginal Deaths in Custody, which reported in 1991, documented how racist attitudes and assumptions still have a destructive effect on Aboriginal lives.

For Aboriginal people today a sense of our collective past is basic to our cultural and political identity. For too many of us it is inscribed in our personal experiences, or the experiences of those near to us.



... until I examined the files of the people who died and other material which has come before the Commission and listened to Aboriginal people speaking, I had no conception of the degree of pin-pricking domination, abuse of personal power, utter paternalism, open contempt and total indifference with which so many Aboriginal people were visited on a day to day basis.

Elliott Johnston, QC, Royal Commissioner into Aboriginal Deaths in Custody, 1991



The Committee is concerned about the failure of many mainstream agencies to provide Access and Equity to their services for Aboriginal and Torres Strait Islander people. This includes providers of electricity, water, sewerage, housing, roads and health services. As a result a large proportion of ATSIC funding is being diverted into the provision of services that should have been delivered by mainstream agencies ...

If mainstream agencies had been providing Access and Equity in their services for the last decade, Aboriginal Affairs funding could have been directed more to addressing ... the social and economic disadvantage of Aboriginal and Torres Strait Islander people particularly in the areas of health, housing and education. In reality, a large proportion is going to provide basic mainstream services which other Australians already receive and take for granted. Mainstream agencies are funded to provide services to all Australians, including Aboriginal and Torres Strait Islander people but, in many instances, are either withholding those services or leaving barriers that act to exclude Aboriginal people.

Access and Equity: Rhetoric or Reality? Report of the Inquiry into the Implementation of the Access and Equity Strategy, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1993

It must strongly be said that we should no longer be fooled by the rhetoric of accountability. We should no longer take the blame for the failure of governments to do their job. We should continue in our struggle for justice and demand that governments at all levels treat us fairly and deal with us in the same way in which they would expect to be dealt with by us.

... if reconciliation is to mean anything, it must mean that you deal with us fairly. It is not acceptable to trumpet the rhetoric of equal treatment when some are more equal than others. It is not acceptable that government should further disadvantage the most disadvantaged in this country. If we recognise that disadvantage, then it must also be accepted that to rectify the present and the future requires an unequal input to achieve an equal outcome.

Aden Ridgeway, Executive Director, NSW Aboriginal Land Council, speaking at the Australian Reconciliation Convention, May 1997

Funding



Aboriginal and Torres Strait Islander people emerged from the assimilation era impoverished, marginalised and, as a result of child separation policies, traumatised. By the 1960s a considerable body of public opinion regarded this state of affairs as shameful and was demanding action. The overwhelming success of the 1967 constitutional referendum initiated a national effort to raise the status of Indigenous people within Australia. Special government programs were introduced, with the Commonwealth leading the way. In 1972 a separate Commonwealth Department of Aboriginal Affairs was established. In 1990 it was replaced by the Aboriginal and Torres Strait Islander Commission.

Over the last three decades there have been marked improvements in housing, education, infant mortality and other aspects of health, relative to the situation of Aboriginal and Torres Strait Islander people in 1967. Indigenous issues and Indigenous culture have grown in status and visibility. But we remain disadvantaged in relation to the Australian population as a whole.

There is compelling evidence that the nature of the problems, and the costs of eliminating them, have consistently been underestimated, and that the assumption by the Commonwealth of a special responsibility in this area has given other levels of government a licence to withdraw.

“There’s too much money thrown at Indigenous affairs!”



The fact is that:

- many specifically Indigenous programs are a substitute for programs provided as a matter of course to the rest of the community;
- mainstream government (Commonwealth, State/Territory and local) has tended to regard the unique problems of Indigenous people as the responsibility of the Commonwealth's specialist Indigenous affairs agency;
- Indigenous programs are comparatively expensive given the diseconomies of scale in servicing many small and dispersed communities, particularly in remote areas; and
- all levels of government have commitments to address the needs of particular groups.

‘They must have the services that everyone takes for granted’

The most visible face of Aboriginal disadvantage remains the many ramshackle communities that are the breeding grounds of ill health and despair. Services taken for granted by other citizens, such as access to power, clean water and sewerage systems, roads and other infrastructure, have historically been denied to these communities. Housing standards are often appalling.

In 1996 Queensland Housing Minister, Mr Ray Connor, said that it would cost \$300 million to overcome what he described as the ‘shocking and appalling’ state of Indigenous housing in Far North Queensland alone.

A subsequent report by the Queensland Parliament’s Public Works Committee, *The Provision of Infrastructure in Cape York*, confirmed the Minister’s concerns and stated that ‘to date, State and local governments have largely overlooked the housing needs of Indigenous people ... living on reserves and outstations’. The report also found a low standard of service provision. In two-year-old houses in the Pormpuraaw community ‘the major cause of health hardware breakdown and the requirement for maintenance is not overuse or vandalism but poor design, specification and construction practices’.

Minister Connor noted that the millions of dollars directed to housing in Far North Queensland had ‘made little impact on the problem’ — ‘To do the job properly will take hundreds of millions’.

According to ATSIC estimates, as much as \$4 billion may be required to eliminate the deficit in housing and infrastructure in Indigenous communities across Australia. At present levels of funding this would take about 20 years.

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Providing capital works in remote areas is very expensive. For Cape York, the Public Works Committee report acknowledged that 'remoteness, lack of a reliable, all weather road and power costs make it expensive to get materials, equipment, tools and skilled people to the building site'.

ATSC currently spends more than one quarter of its annual budget on a successful Community Housing and Infrastructure Program. To eliminate the deficit, however, would require a much greater commitment from those State, Territory and local governments theoretically responsible for housing and infrastructure.

The withdrawal of mainstream government

This issue highlights a general problem that has beset the effort to raise Indigenous living standards.

In arguing with the Commonwealth about resources, the States and Territories say they are at the 'front line' of service delivery in basic areas such as health care, law and justice, education, child welfare and community services, public housing and the provision of essential infrastructure. But this front line responsibility has not necessarily extended to the servicing of Indigenous communities.

More often than not other levels of government are content to leave Indigenous services to be covered from within the Commonwealth's, and particularly ATSC's, budget. As former Prime Minister Malcolm Fraser acknowledged in July 1997 'there are many occasions when main line government departments provide services to non-Aborigines but not to Aboriginals'.

ATSC's involvement in many program areas has arisen precisely because services have not been provided by the responsible State, Territory and local government authorities or even by other Commonwealth agencies.

Substituting for mainstream programs

Many of the Commonwealth's Indigenous programs are doing no more than providing services other Australians access through mainstream programs and entitlements.

Programs have been redesigned to make them more accessible to Aboriginal and Torres Strait Islander people.

A major example of substitution is the Community Development Employment Projects (CDEP) scheme, which accounts for approximately one third of ATSC's budget. CDEP participants forego their unemployment benefits and elect to work on community projects for part-time wages. Two thirds of ATSC's expenditure on CDEP can therefore be offset against the Newstart allowances that would otherwise be payable by the Department of Family and Community Services/Centrelink.

Until reforms announced in the 1998 Budget, CDEP participants were ineligible for certain benefits associated with Newstart. And, depending on how wages are calculated, they may receive less for their community work than they would be entitled to receive as social security benefits.

Other Commonwealth-funded programs that have a substitution factor are ABSTUDY in place of the Common Youth Allowance, Aboriginal Medical Services in place of Medicare, and Aboriginal Legal Services in place of mainstream legal aid.

... it appears that the similarities between Aboriginal and non-Aboriginal programs are more apparent than their differences. In most cases programs specifically for Aboriginal people simply replicate mainstream programs with only minor adjustments.

Far from being discriminatory in their generosity to Aboriginal clients, they are adapted programs with little or no financial benefits over and above their mainstream equivalents.

In many cases ... allegations that no equivalent schemes exist for non-Aboriginal people are simply untrue.

Ms Trish Worth, Liberal MP for Adelaide, July 1996

“Aboriginal people get special treatment from governments.”



The fact is many groups within society get assistance for special needs.

Since 1967, governments, and the people they represent, have accepted a moral imperative to ensure that Aboriginals and Torres Strait Islanders, as citizens of this country, are able to participate fully and equally in the national life. This obligation has to be considered against a background of dispossession and marginalisation, of non-citizenship. Historically and to this day Indigenous Australians have been denied, or have failed to access, mainstream provisions from government.

Given the structural and cultural barriers that we face, it is not realistic to expect us to advance in this society without some special assistance. The long-term aim of Indigenous programs has been to see a majority of our people thrive without the need for such programs. The dangers of welfare dependence have always been acknowledged by policy makers, and by us.

Nevertheless, the remedy for welfare dependence is not the withdrawal of welfare. In any case Indigenous people will always be entitled to receive the basic social security payments available to all needy Australians.

Social indicators

As the Governor-General, Sir William Deane, has said ‘Aboriginal and Torres Strait Islander disadvantage ... is devastating in its extent and entrenched in its nature. It extends across the whole spectrum of human life’. Statistics show that Indigenous Australians are worse off than any other identifiable group of Australians.

- Indigenous people die on average 15–20 years earlier than other Australians, and are far more likely to suffer infectious diseases or chronic diseases such as diabetes, trachoma, ear disease and renal failure.
- The unemployment rate for Indigenous people is an estimated 26 per cent, as against about 8 per cent for the general community, and incomes are approximately two thirds of the Australian average.
- Fewer than one third of Aboriginal and Torres Strait Islander students are finishing secondary school, compared with a national retention rate of around 70 per cent.
- Aboriginal people are over-represented in the criminal justice system by a factor of at least 15.
- Aboriginal people are far more likely to live in poor and overcrowded housing, without essential services.

Aboriginal and Torres Strait Islander poverty is often described as ‘entrenched’. It is self-perpetuating through a number of interlocking factors.

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Other recipients of special programs

The aged, the disabled, the young, people in the arts, veterans, farmers and many other groups within Australian society are entitled to special government assistance in a variety of forms.

Assistance to farmers is in the form of direct payments, market price support and subsidy schemes such as the Diesel Fuel Rebate Scheme. The latter scheme alone, whose main beneficiaries are farmers and miners, has in recent years been costing the Commonwealth as much or more than the ATSIC budget.

Recent annual budgets of the Department of Veterans Affairs have been around \$6 billion, while the Commonwealth provides \$1.5–2 billion on Indigenous programs.

What is funded in Indigenous affairs

There are many misunderstandings about how the Indigenous affairs budget is spent. Very little special funding is directed to individuals. Indigenous people receive exactly the same social security benefits as other Australians.

The majority of programs are delivered through grants to self-managing Aboriginal and Torres Strait Islander organisations — for example, the specialised medical and legal service organisations that cater for our communities in two areas of very high need.

ATSIC also has two small loan-based programs, to purchase homes or develop businesses, and may make specific-purpose grants to State/Territory Governments for them to undertake Indigenous programs.

Some specific assistance schemes are examined on pages 30–39, and the Commonwealth's Indigenous affairs budget for 1997–98 outlined in the Appendix on page 68.

The costs of inaction

The costs of inaction on these issues are potentially huge. A 1998 report commissioned by ATSIC *The Job Still Ahead: Economic Costs of Indigenous Employment Disparity* estimates that income-support payments for the Indigenous workforce (including CDEP) could rise to \$1 billion per annum by 2001. To this sum must be added the indirect costs of long-term economic marginalisation and associated social problems, as well as continued international scrutiny of Australia's most visible human rights issue.



It is the common experience of some people that allows them to be treated differently as a group. Aboriginal people have special needs because of their common experience and not because of their race. In this they are just like other groups whose experience singles them out for particular attention: veterans, farmers in drought-affected areas and so on. In each case a measure of unequal treatment is fair. Justice is a complex concept unable to be reduced to a set of simple platitudes. If we take its demand seriously, then we will find ourselves having to wrestle with the particular circumstances giving rise to each person's claim for a fair go. Treating everybody as if the same is, in many cases, the ultimate form of marginalisation ... It treats a person as if an object; it reduces them to a standard unit in which their difference, and hence their humanity is denied.

Simon Longstaff, Executive Director,
St James Ethics Centre, Australian, June 1997

“Nothing has got better. Why throw good money after bad?”



FACT

The fact is there has been great progress since 1967. Nevertheless, the difficulties and complexities of the national effort to raise Indigenous living standards have consistently been underestimated and, despite perceptions to the contrary, the effort has not been commensurate with the needs.

Things have got better

Over the last 30 years there have been some improvements in housing standards, and infant and maternal mortality rates have declined. Educational outcomes are significantly better. Where once schooling might have been limited to a few years of primary education, many more of our children now finish secondary school and progress to higher education. In 1975 there were 75 Aboriginals in higher education, today there are more than 7000. Many families have been able to buy their own homes. In the past there was almost no inter-generational wealth creation in the Indigenous community. Successful enterprises have been set up, including enterprises on the land base acquired through Commonwealth and State land rights legislation.

Through the availability since 1977 of the Community Development Employment Projects scheme increasing numbers of Aboriginal and Torres Strait Islander people have been able to convert their unemployment benefits into paid work on community development and enterprises, especially in remote areas where employment opportunities are few.

Across Australia there has been a remarkable revival of pride in Indigenous culture which has found expression in new artforms. Some of the most spectacular contemporary art being produced in Australia is the work of Aboriginal people.

A long haul

There has been only one generation of effort to deal with a situation that has been many generations in the making. Indigenous programs have proved very complex to administer and they cater for a very dispersed and diverse population, living in a range of geographical, cultural and economic situations.

Policy makers initially assumed that a few specialised interventions — in the form of housing, education or enterprise programs — would work to eliminate differences in living standards fairly quickly. But this view did not take account of many factors: the failure of mainstream government, the cultural differences between us and other Australians, or the extent of our alienation.

There was also a very poor statistical base from which to measure need, a deficiency that has started to be rectified only in recent years.

Underlying demographic factors have increased the need. The Indigenous population is significantly younger than the general population and is growing at a much faster rate. In an overwhelmingly urbanised nation more than a quarter of our population still lives in rural or remote areas. Remote communities are particularly isolated from mainstream services. In northern and central Australia many Aboriginal people from larger centres have dispersed to form smaller settlements on their traditional lands. This 'outstation' movement, though a positive development, has further complicated service delivery.

Over the decades since 1967 broader Australian society has itself been subject to many economic and social changes that have made things more difficult for us. Those who have worked, if at all, in low-skilled occupations have been badly affected by restructuring and economic globalisation. The relative decline in rural industries in particular has deprived Aboriginal and Torres Strait Islander people of jobs. Indigenous employment programs have operated in a deteriorating environment, and continue to do so.

Commenting on the Commonwealth's efforts to improve Aboriginal health, Michael Wooldridge, Minister for Health and Aged Care, has acknowledged that it will take the best part of 'a generation of concerted and co-ordinated action involving several portfolios, all levels of government and the non-government sector'.

'To put it in simple terms, we are in for a long, hard, unglamorous grind,' Mr Wooldridge said.

The invisible context

A major factor entrenching our unequal position within society is general community attitudes.

Racism and discrimination have not gone away. A 1992 Commonwealth report *Mainly Urban* noted that 'whilst overt racism is diminishing, subtle forms are taking its place' and that 'discriminatory behaviour and overt racism tend to increase during periods of economic downturn'.

Indeed, a lot of the more uninformed criticism of Indigenous programs is at worst racist and at best betrays a marked failure to comprehend the formidable barriers that Aboriginal and Torres Strait Islander people still face in contemporary Australia.



Indigenous social justice is not just a parcel of goods to be delivered by government. It entails accepting the rights of Indigenous peoples and establishing processes which translate abstract principles into the actual enjoyment and exercise of rights. The practical enjoyment of rights is dependent on the processes and systems which shape the interaction between people, communities and governments ... In a policy area like Indigenous affairs, matters of philosophy are central. Policies flowing from a basic assumption that Indigenous individuals simply need to be allowed to compete equally in a predominantly European-derived society will differ markedly to policies based on valuing cultural difference.

Mick Dodson, *Third Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1995*

“The money hasn’t got through to the people who need it.”



The fact is that Indigenous programs are fully accountable and tightly targeted. They operate in an environment of extraordinary scrutiny, both from government and the Parliament and from the media and public.

Accountability, however, has two aspects. The first is the accountability of agencies and organisations that receive government funding. This is dealt with on pages 26–8. The second — and from our perspective just as important — is the accountability of governments to Indigenous communities. As this publication argues, there are long-standing concerns that, in the area of Indigenous affairs, Australia’s system of competitive federalism provides a structure in which the responsibilities of governments can be conveniently ignored or obscured.

Empowerment through self-management

Many Indigenous programs are run on the principle of self-management — funding is directed to Indigenous-controlled service delivery organisations such as community councils, medical services, legal services, housing co-ops, and social, cultural and sporting bodies. ATSIC administers annually as many as 6000 grants to some 1300 organisations. The funding of organisations accounts for most of the Commission’s program budget. Other agencies such as the Department of Health and Aged Care and other levels of government also fund Indigenous organisations.

Today numbering around 3000, the Aboriginal and Torres Strait Islander organisation sector has been growing since the early 1970s when the first community groups were set up in Sydney. Over the years governments have sought out these organisations to deliver more accessible and culturally appropriate services. This method of program delivery has several advantages: it ensures Indigenous input, brings services closer to the community, and provides both employment and a training ground in management.

From time to time there may be accountability problems with particular funded organisations, or particular projects. In 1996 the Commonwealth appointed a Special Auditor to examine the financial documentation of ATSIC-funded Indigenous organisations. Before the termination of the audit, 95 per cent of these organisations were cleared for further funding. The audit found that most accountability problems related to the small size of some organisations and the need for financial and management training. This is a predictable result in a community that has generally low educational attainments and cultural values and practices that differ markedly from other Australians.

The report also acknowledged that ATSIC had of necessity funded organisations with poor records of accountability especially in remote areas where there were no alternative service providers.



Fred Chaney, a former Minister for Aboriginal Affairs, has talked about the additional burdens that self-management may impose within Indigenous communities. Remote communities in particular may have to take direct responsibility for services that are elsewhere provided automatically by governments — ‘Aborigines are in many places made more responsible for their physical circumstances than other groups ..., so there may well be overload’.

ATSIC’s Community Development Employment Projects (CDEP) scheme is the focus and the means by which many Indigenous communities provide government-type services to themselves.

Seizing opportunities

Though it cannot be asserted that all self-managing communities are successful, there are many Indigenous organisations around Australia working with the government programs available to achieve the best possible results for local people.

North of Kalgoorlie in the desert of eastern Western Australia is Warburton. Here the Ngaanyatjarra Council, along with the Ngaanyatjarraku Shire Council, controls an area of about 20 million hectares and comprises some 11 Aboriginal communities. Enterprises, including a brickworks and road houses, have been established. A glassworks transposes Aboriginal art on to glass panels for sale. There are plans for a major cultural centre. Recently internal roads have been sealed and curbed, and the sewerage system upgraded through ATSIC’s Community Housing and Infrastructure Program. More than 300 residents participate in CDEP. The community has dealt successfully with mining companies and taken initiatives to deal with social problems such as petrol sniffing. In an area of limited economic opportunity, the regular traffic along the Gunbarrel Highway is exploited as a source of income.

The Jawoyn Association in Katherine in the Northern Territory exhibits a similar entrepreneurial flair. The executive has produced a five-year plan. They have tourist enterprises in partnership with Travel North at Katherine Gorge. Like the Ngaanyatjarra people, the Jawoyn want to strengthen their association by becoming the administrative focus for activities on their land, whether it be night patrols and relations with the police, education, housing or improving the administration of CDEPs and other organisations.

What is being dealt with here is the complex and delicate matter of personal and community development. Last year ATSIC made more than 6000 grants worth more than \$600 million ... A very large proportion of those grants involved dealing with problems of a level of complexity which would challenge every person in this audience ... and defeat many of us. The administrators are caught in a bind. On the one hand there is the absolute determination of the politicians and bureaucrats ... to live up to the high standards of accountability that are demanded. On the other, there is the fact that the programs themselves require an understanding and a supportive environment to make it all work. With limited resources where does the emphasis properly lie? ... cross cultural elements mean that aligning official objectives with the desires of those the programs aim to benefit is unusually difficult.

The Hon. Fred Chaney, in a speech
'Accountability in the Aboriginal Domain',
November 1993



In the past there has been a misunderstanding of what Aboriginal and Islander people have meant when talking of self-determination. What has always existed is a willingness and a desire by Aboriginal and Islander people to be involved in the decision-making process of government.

We must ensure that Aboriginal and Islander people are properly involved at all levels of the decision-making process in order that the right decisions are taken about their lives.

Aboriginal people need to decide for themselves what should be done — not just take whatever governments think or say is best for them.

Gerry Hand, Minister for Aboriginal Affairs, statement to the House of Representatives proposing the establishment of an Aboriginal and Torres Strait Islander Commission, December 1987

There can be no doubt, however, that the establishment of ATSIC has raised the stakes in Indigenous affairs. It has given Indigenous aspirations a stronger political voice. The Commission has been the recipient of greatly increased funding, mainly due to the Commonwealth's response to the recommendations of the report of the Royal Commission into Aboriginal Deaths in Custody.

ATSIC's very existence is symptomatic of an effect that is bewildering many Australians. Why, after so many years, has Indigenous affairs not got simpler? Why has it become more complicated?

After the 1967 referendum it was felt that raising the status of Indigenous Australians would be a relatively simple task. It just required a bit of money, a bit of goodwill.

The special Commonwealth agency was meant to disappear within ten years.

ATSIC is left trying to account for why this has not happened.

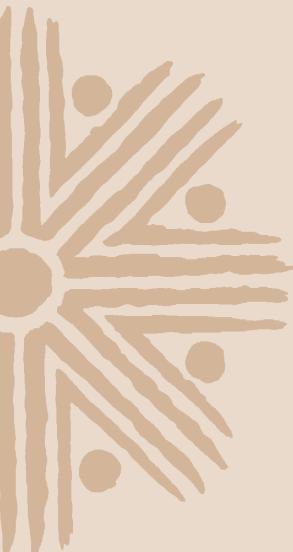
Patricia Turner, Chief Executive Officer of ATSIC, address to the Australian Institute of Public Administration, November 1996

ATSI C

The Aboriginal and Torres Strait Islander Commission was set up in 1990 to be the main Commonwealth agency in Indigenous affairs. It represented a major departure from previous administrative arrangements in that it was based on the principle of Indigenous decision-making. All funding and policy decisions within ATSIC are taken by elected Indigenous representatives on 35 Regional Councils around Australia and on the ATSIC Board, currently comprising 19 members, 17 of whom are elected from among Regional Councillors.

The Commission has given Aboriginal and Torres Strait Islander people a stronger political voice during a period when other developments — the Royal Commission into Aboriginal Deaths in Custody, the *Mabo* judgment and the process of reconciliation — have combined to place Indigenous issues high on the national agenda.

As the most prominent Indigenous agency ATSIC is often blamed for the fact that our people remain gravely disadvantaged. It is not widely understood that ATSIC's budget can only top up the responsibilities of other agencies and other levels of government.



ATSI C

“It’s ATSIC’s job to fix up all the problems of Indigenous people.”



The fact that our people continue to live in circumstances that other Australians would not tolerate is primarily due to the failure of State, Territory and local governments to meet their obligations.

In basic areas such as health care, education, the justice system, child protection, essential service delivery and the provision of community infrastructure, these governments have a responsibility to all Australian citizens.

ATSIC does not have the resources to do all things for all Aboriginal and Torres Strait Islander people, but as the agency in the public eye it bears the burden of Indigenous expectations.

In 1998–99 ATSIC will administer only about 60 per cent of the Commonwealth's Indigenous affairs budget.

In addition to administering some Commonwealth programs, ATSIC has other equally important roles. The ATSIC Board is the main policy-making body in Aboriginal and Torres Strait Islander affairs, an adviser to government, and a powerful advocate of Indigenous interests on the national and international stage.

A shared responsibility?

Since 1967 administrative arrangements in Indigenous affairs have been based on the premise of a shared responsibility between Australia's various governments. At the 1967 referendum the Commonwealth sought the power to legislate for Aboriginal people. But, in the words of the official ‘yes’ case, the passage of the referendum would not involve the States giving up their responsibilities: ‘The Commonwealth's object will be to co-operate with the States to ensure that together we act in the best interests of the Aboriginal people of Australia.’

In 1972 ATSIC's predecessor, the Department of Aboriginal Affairs, was established to have a supplementary funding role in the provision of programs and services to Indigenous people.

In theory, therefore, the Commission's limited funds should complement — not substitute for — the funds that other levels of government provide. The shared responsibility has not worked in practice, however, as the States and, from self-government, the Northern Territory have been reluctant to provide for the special needs of Indigenous Australians from within their own budgets. The effect has been to entrench a very uneven distribution of resources across the Australian community. Numerous studies have revealed marked disparities in service provision between Indigenous and non-Indigenous towns and settlements.

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A National Commitment

In 1992 the Council of Australian Governments (made up of the Commonwealth, State and Territory Governments with the Australian Local Government Association) endorsed the 'National Commitment to Improved Outcomes in the Delivery of Programs and Services to Aboriginal Peoples and Torres Strait Islanders'. The National Commitment provides a framework for inter-governmental co-operation.

Though progress was initially slow recent years have seen the negotiation of a number of bilateral agreements. ATSIC now has housing/infrastructure agreements with three States and the Northern Territory. Under these agreements funding from the two levels of government is pooled and managed jointly, resulting in improved planning and project delivery. In addition, the Commonwealth has bilateral agreements on Indigenous health with all States and Territories.

Such agreements will lead to greater accountability on the part of State, Territory and local governments in providing services to Indigenous communities. They should also lead to a greater concentration of effort in Indigenous affairs and less duplication.

The view is that, with the establishment of ATSIC, ATSIC has the responsibility for all Aboriginal affairs ... If you read through Hansard for the Senate estimates committees where we appear, you will find that anything that involves Aboriginal people in any way whatever is something that ATSIC is questioned on, whether it is a decision of the WA Supreme Court or bushfires in northern Australia ... There is a profound lack of understanding that what ATSIC undertakes and what other agencies undertake in their Aboriginal specific programs have got to be supplementary to equitable access to mainstream programs. We cannot be the provider of all the housing, the infrastructure and the health services that are required by Australia's most disadvantaged group.

Former ATSIC CEO, Dr Peter Shergold, quoted in
Rhetoric or Reality? 1993



“ATSIC is not accountable.”



The fact is ATSIC is subject to more scrutiny than most other agencies, because it is an Indigenous-controlled organisation in a very exposed area of government.

The ATSIC Board has from its inception put a high priority on accountability. Concerns about how ATSIC spends its budget arise for the most part from the fact that ATSIC does not have the resources to meet every need in Indigenous Australia, even obvious and long-standing needs.

Administrative costs

ATSIC is part of the Australian Public Service and its employees subject to APS rules. Remuneration and allowances for members of the elected arm (Regional Councillors and Commissioners) are set by the Commonwealth Remuneration Tribunal.

Since 1990 the proportion of the ATSIC budget spent on administration (including the costs of a widely dispersed elected arm) has remained around 14 per cent. The program budget — most of which goes to CDEP communities, to Indigenous organisations or to provide housing and infrastructure — accounts for about 86 per cent of ATSIC's total expenditure.

Scrutiny of ATSIC

Spending by ATSIC is subject to the usual processes of public accountability that apply to public sector spending: Senate Estimates, scrutiny by the Auditor General and by parliamentary committees.

In addition, ATSIC is subject to review by the Office of Evaluation and Audit (OEA). Established under the ATSIC Act, the OEA is an independent statutory body that reports directly to the Minister for Aboriginal and Torres Strait Islander Affairs and the Board of Commissioners.

OEA's evaluation program focuses on outcomes from ATSIC's programs and administrative functions; its audit program examines the processes and efficiency of internal operations. Evaluations and audits are conducted cyclically and extend to the operations of the Regional Councils and other portfolio bodies. The Office may also conduct special evaluations/audits at the request of the Minister or the Board, and *ad hoc* assignments on matters of concern to the Office.

The Australian National Audit Office has noted that 'no other Commonwealth agency has a position equivalent to the Director of OEA created by legislation and with such strong independent reporting powers'.

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The elected arm

Most funding decisions on the ATSIC budget are made by elected representatives.

The ATSIC Act has many provisions that require elected representatives to perform their duties responsibly and ethically and avoid any conflict of interest. Any allegations of impropriety made against elected representatives are dealt with promptly according to procedures that have been refined since ATSIC's establishment.

Importantly, Regional Councillors face an election every three years, and thereby account to their community.

Scrutinising Indigenous organisations

Those criticising ATSIC's accountability may be failing to make a distinction between the Commission and the self-governing organisations it funds.

The Board's concern with accountability has resulted in the development of a rigorous grant-administration system.

In nearly all cases ATSIC funds organisations that are incorporated bodies. This means that the organisations must maintain proper accounts and records and produce audited annual financial statements. The Australian Securities and Investment Commission, the Registrar of Aboriginal Corporations and a number of State/Territory regulatory authorities are responsible for ensuring that organisations meet their incorporation requirements. ATSIC relies on these regulatory bodies to take action to protect the interests of both members and funding agencies where there are breaches of incorporation requirements.

ATSIC's grant conditions ensure that:

- funds are used for the purpose for which they were provided;
- funds are properly accounted for; and
- funding recipients demonstrate sound management practices.

If ATSIC has concerns about the administration of organisations, it may appoint a Grant Controller to oversee the organisation's use of money provided by ATSIC.

ATSIC reports to the regulatory authorities any concerns about the management of funded organisations which ATSIC does not have the power to investigate or remedy.



There are many reasons why ATSIC is a less complacent organisation than its predecessors. It began with a political idea, to turn over decision-making in Indigenous affairs to Indigenous elected representatives ... When the original model for ATSIC was put to Parliament in 1987, it was a controversial proposal. ... Special accountability measures were built into the ATSIC Act. The Commission has within its structure an Office of Evaluation and Audit, with a Director appointed by the Minister who reports directly to the Minister and the Board ...

Precisely because ATSIC was given a challenging political and administrative task, it has been a far more dynamic and self-critical organisation than either of its predecessors. ATSIC has known from the beginning that it has had to watch its back. Some say we spend too much time watching our back, that we are over-regulated and over-audited, and that these processes may be diverting us from our charter.

Former ATSIC Chairperson,
Lois O'Donoghue, *Australian*, June 1996



Special Auditor

In April 1996 the new Commonwealth Government appointed a Special Auditor to examine all Indigenous organisations receiving funding from ATSIC to determine whether or not they were 'fit and proper bodies to receive public money'. Though the audit was cut short, the Report of the Special Auditor, tabled in Parliament in October 1996, found that:

- of the 1122 organisations reviewed, 1062 — or 95 per cent — had been cleared for future funding;
- ATSIC's funding and accountability procedures were detailed and rigorous; and
- many accountability problems related to the small size of organisations and the need for restructuring and management training.

Gains in accountability

Since its establishment in 1990 ATSIC has made considerable gains in the area of accountability. These were acknowledged by the Australian National Audit Office in a paper presented at the National Reconciliation Convention in 1997. In the words of the ANAO, the results of their analysis 'challenge some common perceptions of accountability in this area'. The paper pointed to 'notable improvements in administration by ATSIC over the 1990s'.

In recent years ATSIC (and other portfolio bodies) have received unqualified accounts. This achievement during a period when financial reporting requirements have generally become more stringent reflects a major effort to reform the administration of CDEP, one of the most complex programs in public administration.

In 1995 the Commission began a comprehensive reform of Aboriginal Legal Services, aimed at improving service delivery and outcomes for clients. From 1997–98 funding has been made conditional on the legal services' implementing reform measures. Because of serious breaches in grant conditions, the Aboriginal Legal Service of New South Wales (in the 1970s one of the first Aboriginal organisations to receive support from government) was defunded in 1996, and legal services in that State devolved to regional organisations through competitive tendering.

“ATSIC is not representative of Indigenous people.”

The fact is the elected arm of ATSIC has a mandate to speak on behalf of Indigenous people and to make policies in Indigenous affairs.

The three ATSIC Regional Council elections have seen an increasing voter turnout. In 1990, 29 per cent of the adult Aboriginal and Torres Strait Islander population voted in the election. In 1993, the figure increased to 31 per cent. The most recent election, in October 1996, saw that figure increase again by 8.7 per cent. In 1996 a total of 49,812 Aboriginal and Torres Strait Islander adults voted for the 35 Regional Councils that are the basis of ATSIC's elected arm.

These participation rates compare favourably with voter turnouts in similar non-compulsory elections. For example, the turnouts in the local government elections in South Australia and Western Australia in May 1993 were 20 per cent and 14 per cent respectively.

Many Indigenous Australians are still not enrolled on the Commonwealth electoral roll which is a requirement to vote in the ATSIC elections. This major impediment to participation has its origins in the isolation of many Indigenous communities or their general alienation from mainstream politics.

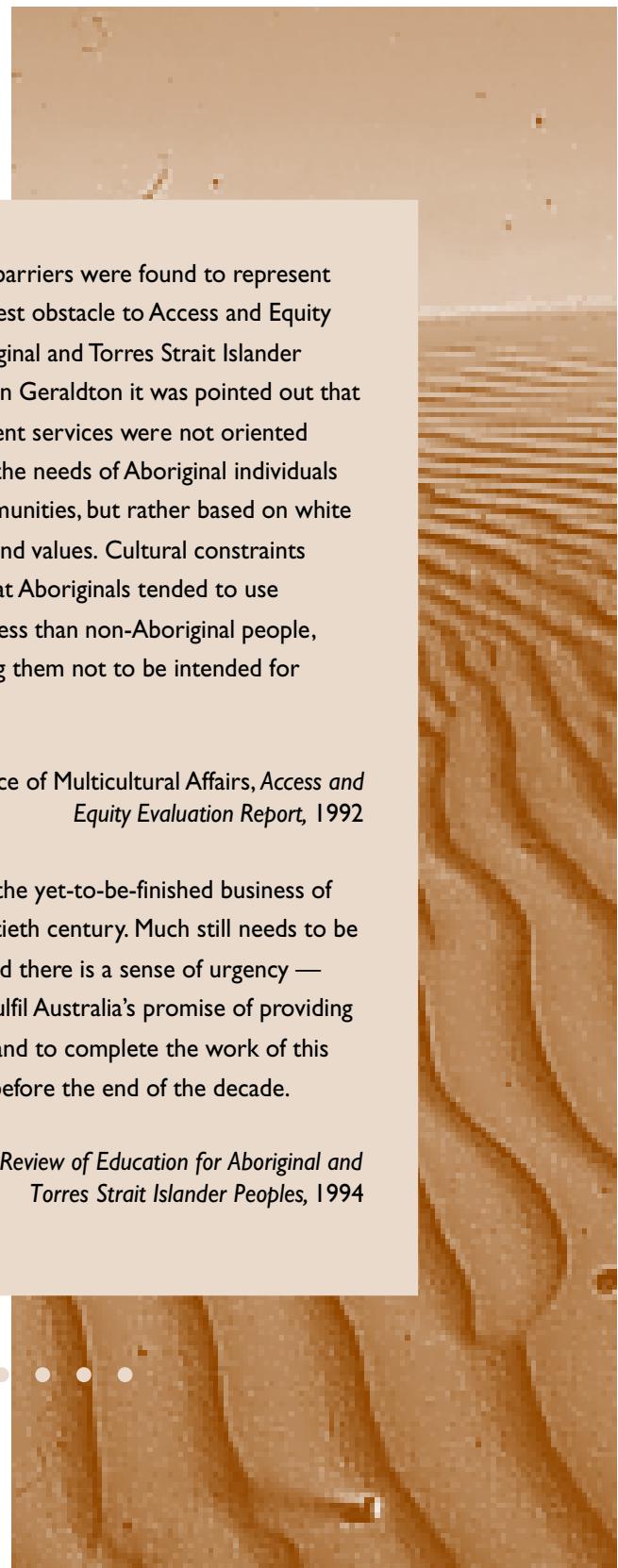
Since its establishment ATSIC has worked to ensure Regional Councils are as representative as possible. In the 1993 elections, a system of wards (set areas) was introduced for some Regional Council areas, allowing smaller groups of people in large regions to have a representative from their ward on a Regional Council.



The advent of ATSIC has generated a range of responses by governments and Indigenous communities. Governments have been at times reluctant to accept ATSIC's statutory representative, advisory and co-ordinating roles. Certain Indigenous organisations have also been critical of ATSIC's role and representativeness. They have challenged its decisions or sponsored challenges in the public debate, in courts or tribunals or through the Ombudsman. To a great extent these challenges should not be regarded as surprising or necessarily reflecting on ATSIC's competence. It is only natural that other organisations may have agendas that differ from the Commission's. It should not be assumed that Indigenous Australia will always speak with one voice.

But ATSIC as the only national structure of Indigenous representation will endure. Above all, ATSIC represents a challenge for Indigenous Australians, a challenge to get involved, to make its processes work for them.

Chairperson's Introduction,
1994–95 ATSIC Annual Report



Cultural barriers were found to represent the greatest obstacle to Access and Equity for Aboriginal and Torres Strait Islander peoples. In Geraldton it was pointed out that government services were not oriented towards the needs of Aboriginal individuals and communities, but rather based on white systems and values. Cultural constraints meant that Aboriginals tended to use services less than non-Aboriginal people, perceiving them not to be intended for their use.

Office of Multicultural Affairs, Access and Equity Evaluation Report, 1992

Equity is the yet-to-be-finished business of the twentieth century. Much still needs to be done. And there is a sense of urgency — both to fulfil Australia's promise of providing a fair go and to complete the work of this century before the end of the decade.

National Review of Education for Aboriginal and Torres Strait Islander Peoples, 1994

Specific programs



Resentment of Indigenous programs is often focused on specific assistance schemes. But all of these schemes have evolved in response to urgent identified needs. They are more than justifiable given the ultimate cost to the Australian community in not providing for the special needs of Indigenous Australians.

Aboriginal and Torres Strait Islander people have tended not to use mainstream government programs. Indigenous-specific programs have been devised as a means of making government services more accessible. If they are delivered by an Indigenous community organisation, then the programs are even more likely to be acceptable.

Indigenous programs generally do not result in our receiving more than other Australians. The very few that have been more generous in their provisions — such as ABSTUDY or ATSIC's Housing Loans Scheme — have also been the most effective in providing real improvements for Aboriginal and Torres Strait Islander people.



“Indigenous people shouldn’t be able to get special home loans.”



FACT

The fact is the Indigenous home ownership rate is only about 30 per cent, compared to 70 per cent in the general Australian community.

There are a number of factors that have prevented us from becoming home owners, including family incomes that are two thirds the Australian average. Prejudice against Aboriginal and Torres Strait Islander borrowers may also play a part in barring access to conventional loan sources.

Since 1974 the Commonwealth has been administering a very successful Home Ownership Program for Indigenous Australians on low incomes. It has assisted more than 8400 families to purchase homes.

Home ownership is one way that we can accumulate assets and escape from dependence on government subsidies or social security. This reasoning has lead several State/Territory governments around the country to establish similar schemes for other low-income earning families.

ATSIC's Home Ownership Program

ATSIC's Home Ownership program is tailored to the circumstances of Aboriginal and Torres Strait Islander people. It has lower deposit requirements and lower interest rates than commercial schemes.

There are strict eligibility requirements:

- applicants must prove their Aboriginality; and
- the scheme is means tested.

Those on high incomes do not qualify for loans. Applicants need to produce satisfactory evidence that their family income (gross weekly income of the main income earner, combined with half of the spouse's gross weekly income) is within the range of 50 per cent to 150 per cent of the National Average Weekly Male Earnings (\$769 per week at June 1998).

Currently interest on the loans starts at 4.5 per cent per annum and increases by 0.5 per cent per annum until it reaches the ATSIC Home Loan Rate, set at not more than 1 per cent below the Commonwealth Bank variable housing loan interest rate. Applicants with adjusted combined earnings of less than \$25,000 may qualify for a lower commencing interest rate of 3 per cent.

Applicants must pay a deposit of either \$3000 or 5 per cent of the total cost of the home, whichever is the lesser. For those with combined earnings less than \$25,000 the deposit requirements are \$1500 or 5 per cent.

ATSIIC's Home Ownership Program is largely self-funding. New loans are made from revenue raised from loan repayments and loan discharges. This money is held in a Housing Fund established under the ATSIIC Act.

During the period from 1990 to December 1998, it is estimated that home loan repayments and discharges have generated over \$280 million, and about 3700 loans have been made for \$294 million.

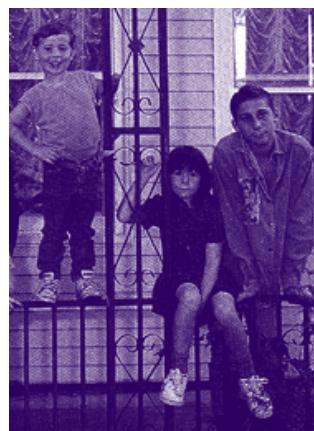
The number of ATSIIC housing loans is limited. Around 400 are made yearly.

At 30 June 1998 there were 3807 active loans. Less than 10 per cent of borrowers are in arrears on repayments — a performance comparable to other low-income lending schemes.

ATSIIC's Home Ownership scheme can be used only by people wanting to buy private dwellings in the mainstream home market, mainly in towns and cities. Aboriginal people living in communities on Aboriginal land do not have access to housing loans. They may, however, benefit from ATSIIC's other housing programs.

Other public-sector home loan schemes

There are six other public-sector home loan schemes in Australia, five run by State/Territory governments and one by the Defence Housing Authority. Most of these schemes cater for low-income clients. In general the ATSIIC scheme provides more benefits for the disadvantaged, though greater levels of deposit assistance have been offered by some of the other schemes.



Using data from the 1994 National Aboriginal and Torres Strait Islander Survey, the evaluation found home ownership to be significantly associated with a higher probability of mainstream employment, and a lower probability of criminal arrests and family violence, all of which are priority areas of government intervention ... ATSIIC home loan clients also reported a greater sense of economic empowerment, security, stability, enhanced lifestyle choices, and improved self-esteem.

From the Final Report of the Evaluation of the Home Ownership Program,
Office of Evaluation and Audit, July 1996

“There’s no need for Indigenous people to have their own medical services.”



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The fact is, if expenditure on hospital care is excluded, less is spent per capita on Indigenous health than on the health of other Australians. However, Aboriginal people are admitted to hospital sicker, often with more than one illness, and stay longer.

Recent detailed research has found that for every health dollar spent on non-Indigenous Australians about \$1.08 is spent on Indigenous Australians, yet we are three times as sick.

Worse than other Indigenous peoples

The health of Aboriginal and Torres Strait Islander people is worse than in many Third World countries, and worse than that of Indigenous populations in comparable countries such the USA, Canada and New Zealand.

Life expectancy for both men and women is 15–20 years below other Australians. From 1992 to 1994 Aboriginal and Torres Strait Islander males died at 3.5 times the rate of the general male population, while Aboriginal and Torres Strait Islander females died at 4 times the expected rate. For some conditions the rates were much higher. Indigenous death rates from diabetes were 12 times higher for men and nearly 17 times higher for women.

Our health disadvantage begins early and continues throughout life. In most States and Territories, Indigenous babies are 2–3 times more likely to be of low birth weight, and 2–4 times more likely to die at birth than are babies born to non-Indigenous mothers.

These statistics come from *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, a biennial report last published in March 1997 compiled by the Australian Bureau of Statistics and Australian Institute of Health and Welfare.

This 1997 report noted the effects on Indigenous health of poor housing, overcrowding and lack of access to clean water and proper waste removal. Lifestyle factors, such as poor nutrition and higher rates of smoking, were also highlighted.

Indigenous people are likely to live further away from health facilities and health professionals, adding to the costs of service delivery, and the proportion of our people working in the health field is only half that for non-Indigenous Australians.

What is spent on Aboriginal health?

In May 1998 *Expenditures on Health Services for Aboriginal and Torres Strait Islander People* (the Deeble report), commissioned by the Department of Health and Aged Care, provided detailed analysis on an area where previously there had been little concrete information.

The report estimated that overall expenditure on Indigenous health was only about 8 per cent higher than for other Australians, despite the extent of disadvantage and the fact that more Indigenous people live in remote areas.

According to Sir Gustav Nossal, Deputy Chair of the Council for Aboriginal Reconciliation, the Deeble report refutes 'a widespread belief that buckets of money have been thrown at Aboriginal health, and that much of this has been wasted'.

The report found that the pattern of health-service use differed markedly between Indigenous and non-Indigenous Australians.

Our people relied more on publicly-provided hospital and community health services and spent much less on the private doctors, specialists, private hospital care, dentistry, medicines and associated services used by the typical non-Indigenous person.

The Commonwealth's two largest health programs are Medicare and the Pharmaceutical Benefits Scheme (PBS). Per person, our benefits under Medicare were only 27 per cent of the average for non-Indigenous people, and only 22 per cent for the PBS. To some extent this is offset by the Commonwealth's funding of Aboriginal Medical Services. Even so, the total of Aboriginal Medical Service grants, Medicare benefits and Pharmaceutical Benefits was still about \$100 per person less than other Australians received from Medicare and PBS alone.

The Deeble report found that nearly 80 per cent of all health services to Aboriginal and Torres Strait Islander people were managed by the States and Territories and, as with non-Indigenous people, hospital expenditure dominated. However, Indigenous people are admitted to hospital more frequently than non-Indigenous people.

There are a number of reasons for this: our limited access to basic primary health care, especially in remote areas, the fact that mainstream health services are not always delivered in culturally appropriate ways, and our history of poor living conditions.

The disproportionate use of hospitals inflates the funding that governments can claim is devoted to Indigenous health. But this points to a relative lack of resources at other, more effective points of the health system. If more resources were available for health promotion, disease prevention and early treatment, then less would be required after illnesses become chronic or acute.

Aboriginal Medical Services

Aboriginal Medical Services are community-run organisations that provide primary health care and some health education programs to our communities. They have been funded by the Commonwealth since the 1970s but even today by no means all Aboriginal people have access to such a service.

The Department of Health and Aged Care spent \$105.6 million on AMSs in 1997–98 and a further \$17 million on substance abuse services. In recent years the Commonwealth has been working to extend the coverage provided by the health services. During 1997–98 new or expanded services were provided or approved for 36 communities.

...the state of health of this small part of the Australian population is an absolute national disgrace. It is the worst health status of any identifiable group on this planet as far as we can find, but it is a problem that can be solved ... If we were to spend on Aboriginal people the same amount of money as would be provided for white Australians with the same level of illness it would probably require an extra \$600 million a year or more to be spent on Aboriginal health care in this country.

Dr Keith Woollard, Federal President of the Australian Medical Association, speaking to the media after a meeting with the Prime Minister, May 1997



“Special Indigenous education programs are unfair to other Australians.”



The fact is, from a base of almost no participation at all, Aboriginal and Torres Strait Islander people are still at a disadvantage in the education system. Our students receive some special assistance — just like other disadvantaged Australians — because governments recognise how crucial education is to success in other areas of life.

From 1 January 2000, however, the main Indigenous assistance scheme, ABSTUDY, will offer the same benefits as the equivalent schemes for non-Indigenous students.

Still disadvantaged

In 1994 the National Aboriginal and Torres Strait Islander Survey revealed that nearly half of those surveyed aged 15 and over had no formal education or had not reached year 10 levels. For nearly three people in ten, the year 10 certificate was the highest educational attainment.

It was not until the 1940s that Indigenous children were provided with teachers in government reserves, and the first special assistance programs began only in 1969.

Commonwealth programs have since then been markedly successful in increasing Indigenous participation. The National Survey also confirmed the important role that education and training have played in securing employment, and higher incomes, for Indigenous people.

ABSTUDY recipients have increased from 115 in 1969 to 49,800 in the 1997–98 financial year. In 1997 the retention rate for Indigenous students continuing to year 10 rose to 81 per cent. Retention rates to year 12 peaked in 1994 at 33 per cent, but by 1997 had declined marginally to 31 per cent. This, however, compares to a general year 12 retention rate in 1997 of 72 per cent.

Aboriginal and Torres Strait Islander enrolments in higher education were negligible in the late 1960s, but by 1997 had risen to 7460. Nevertheless, the participation rate is still less than that for other Australians, and Indigenous students' success and retention rates are about 20 per cent lower. Our students continue to be under-represented in many disciplines.

Contributing to our educational disadvantage are poor health, poverty, location and cultural factors. Many remote communities have little or no access to secondary or tertiary education, and English may be a second or even third language.

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ABSTUDY and other assistance measures

ABSTUDY has been both an income support and an educational incentives scheme available to Aboriginal and Torres Strait Islander people who undertake approved secondary or tertiary education courses.

ABSTUDY has provided slightly higher benefits than were available to non-Indigenous students, as well as certain extra benefits. Some of the latter were phased out in the 1997 Federal Budget, and in December 1998 the Government decided to make ABSTUDY living allowances equal to those paid under the Common Youth Allowance (for students aged 16–20) or Newstart (for students aged 21 and over). The revised benefits will apply from 1 January 2000.

Means tests applying to the Youth Allowance will now apply to ABSTUDY living allowances for all age groups. (Some ABSTUDY elements had not been means tested.)

Away-from-base payments for 'mixed mode' course delivery will no longer be made to students but to institutions as block grants under Indigenous education agreements.

The Minister for Education, Employment and Training, Dr Kemp, justified the changes saying that 'All Australian students are entitled to equal educational opportunities'.

In addition to ABSTUDY, the Commonwealth has a number of other schemes that provide individual educational assistance and information to Indigenous students and their parents, and assist parents' involvement in their children's education. A number of schools, colleges and universities are supported to improve educational outcomes for Indigenous students or to meet our particular needs.

But we are not the only beneficiaries of special education programs. The Commonwealth funds assistance for other disadvantaged groups, including isolated children (with a non-income-tested element), students with disabilities or those from non-English speaking backgrounds. State and Territory Governments also have various student assistance schemes, some of which have specifically excluded ABSTUDY recipients.

Even with special programs, it will be many years before Indigenous Australians reach full educational equality with other Australians.

A more appropriate education?

What is taught in schools, colleges and universities is also an issue for Indigenous people. We have sought more culturally-appropriate curricula adapted to our needs, and asked too that non-Indigenous students learn about Aboriginal and Torres Strait Islander history and culture.

Until recently the Northern Territory Government supported bilingual education programs in areas where Aboriginal languages are widely spoken. In December 1998 the Territory Government announced that these would be replaced with English-as-a-second-language programs.

My vision for all young people going through the school system in this country is that Aboriginal Studies will be a mandatory part of every child's experience, and that it should be as normal as History or English. This needs to be a fundamental part of developing the Australian identity. I remember as a student in Year 7 being made to feel ashamed that I was Aboriginal, because of what I was being taught. I would like to think that that no longer happens, although I'm not so sure of it.

Linda Burney, former President of the New South Wales Aboriginal Education Consultative Group

“Indigenous Australians shouldn't have their own legal services — and get it easy in the criminal justice system.”



FACT

The fact is Aboriginal and Torres Strait Islander people are massively over-represented at every stage of the justice system. This was the principal finding of the Royal Commission into Aboriginal Deaths in Custody, which reported in 1991. The situation has not improved despite the commitments made by governments in the wake of the Royal Commission.

Because of our over-representation many communities have established their own legal services. ATSIC funds a network of 25 such self-managing organisations across Australia. The legal services work to represent offenders in the justice system (85 per cent of their work is in criminal law) and educate people about their legal rights. To a large extent these services substitute for mainstream legal aid, and are the preferred recourse of Aboriginal people. They also take an active interest in issues relating to Indigenous rights, including conducting test cases. Most of the services are operating under extreme pressure with increasing volumes of work.

Royal Commission into Aboriginal Deaths in Custody

The report of the Royal Commission into Aboriginal Deaths in Custody remains the most comprehensive survey of Indigenous law and justice issues and of the underlying causes which bring Aboriginal people into excessive contact with the justice system. The Royal Commission found that none of the 99 deaths it investigated were due to deliberate violence by custodial officers, but it did find ‘many system defects in relation to care, many failures to exercise proper care and in general a poor standard of care’.

This is exemplified by the case of a young man in Wilcannia who was taken to hospital for medical treatment, but received no treatment and was unlawfully taken into police custody. Commissioner Wootten found that his death resulted ‘from shocking and callous disregard for his welfare’ on the part of both medical personnel and police officers. The Commissioner wrote:

I find it impossible to believe that so many experienced people could have been so reckless in the care of a seriously ill person dependent on them, were it not for the dehumanised stereotype of Aboriginals so common in Australia and in the small towns of western New South Wales in particular. In that stereotype a police cell is a natural and proper place for an Aboriginal.

Since the Royal Commission

Overall the Royal Commission report has had little or no effect on the total number of Aboriginal deaths in custody. Deaths in policy custody have decreased, but those in prison increased.

Three National Police Custody Surveys, in 1988, 1992 and 1995, have shown an overall reduction in the number of incidents of police custody for both Indigenous and non-Indigenous people. The proportion who were Aboriginal or Torres Strait Islander did not decrease, however. In 1988 and 1992, Indigenous people represented 28.6 per cent and 28.8 per cent respectively of all persons held in police custody. The figure for 1995 was 31.1 per cent.

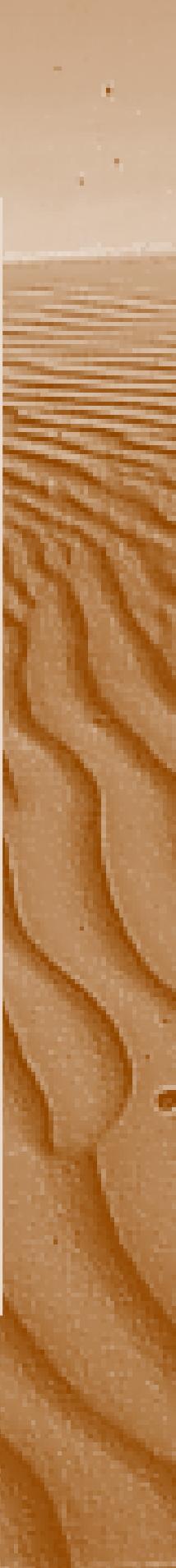
Since 1991 both the total number of Aboriginal prisoners and the level of Aboriginal over-representation have substantially increased. For Australia as a whole, one in 59 Indigenous people aged 17 years and over was in prison on 30 June 1995. This compares to one in 935 non-Indigenous people. The number of Indigenous people in prison custody increased from 2041 in 1990 to 2985 in 1995. Nationally, the level of over-representation rose from 13.5 in 1990 to 15.8 in 1995.

The level of Aboriginal over-representation in juvenile detention is also increasing: from 18.19 in 1994 to 24.61 in 1997. New South Wales, Queensland and Western Australia account for the majority of these juvenile detentions.

Though Australia's governments made commitments in response to the Royal Commission, key recommendations to do with the administration of the justice system have not been implemented. And in the intervening period certain State and Territory Governments have also adopted a more punitive approach to 'law and order' issues.

Aborigines with their vulnerability in the law ... beyond all others, require the assistance of readily available and appropriate legal services throughout this country, a role which has been assumed by the Aboriginal Legal Services (ALS) for some years, a service over which Aborigines have a measure of control. I witnessed the establishment and growth of this Service in the Northern Territory and I had the experience many years ago of sitting in northern courts in South Australia before the Service was established. Because of its diversity, because of the availability of Aboriginal field officers, ALS have succeeded, at times under great difficulties, in providing a measure of protection and security to Aborigines. From time to time the ALS are the subject of criticism ... Suggestions are made that separately funded bodies serving the Aboriginal people are unnecessary ... I emphatically disagree. It is vital that ALS be fostered, that their capacities be widened rather than restricted.

J.H. Muirhead, *Interim Report of the Royal Commission into Aboriginal Deaths in Custody, 1988*



No English words are good enough to give a sense of the links between an aboriginal group and its homeland. Our word 'home', warm and suggestive though it be, does not match the aboriginal word that may mean 'camp', 'hearth', 'country', 'everlasting home', 'totem place', 'life source', 'spirit centre' and much else all in one. Our word 'land' is too spare and meagre. We can now scarcely use it except with economic overtones The aboriginal would speak of 'earth' and use the word in a richly symbolic way to mean his 'shoulder' or his 'side'. I have seen an aboriginal embrace the earth he walks on ... A different tradition leaves us tongueless and earless towards this other world of meaning and significance.

W.E.H. Stanner, *After the Dreaming*, 1968

The co-existence of rights is at the heart of reconciliation, along with respect for different values and acceptance that different sectors of the community can share resources with beneficial results.

...We want to be certain that we are not missing any of the rights and opportunities that other members of the Australian community enjoy. We also want the certainty that we will not be punished for our successes under the processes of European-Australian law ... If our communities are to make headway towards developing economic opportunities and achieving self-empowerment, we need to have confidence that mainstream systems will work equally in our interests as they do for non-Indigenous Australians.

... No Indigenous person will agree to the surrender of our rights as the fee for acceptance by the wider community, and no one truly committed to reconciliation would seek that transaction from us ... If reconciliation dies, it will be killed by those who declare it dead whenever things do not go their way.

Gatjil Djerrkura, Chairman of ATSIC,
Sydney Morning Herald, January 1997



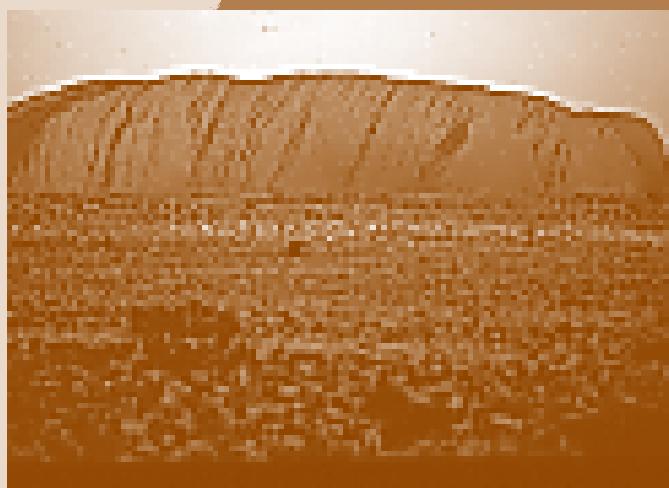
Land

Over much of Australia land is a symbol of what we have lost, and the restoration of at least some land has been a potent cry in Aboriginal politics.

In areas of remote Australia some groups have been granted secure tenure to the land that they and their ancestors have nurtured for thousands of years. Land rights have been a means of preserving culture and reaffirming Aboriginal values.

Land is also central to Torres Strait culture, so much so that Eddie Mabo, born on the island of Mer, spent the best part of 10 years pursuing a court case to gain recognition of his rights to family land, only to die just before the final judgment was handed down in 1992.

In the *Mabo* judgment, the High Court of Australia determined that a 'native title' to land survived the colonisation of Australia, thus enshrining Indigenous land rights in Australia's common law.



“Aboriginal people have no more connection to the land than I do.”



The fact is that land ownership is viewed by Aboriginal and Torres Strait Islander people as fundamental to our well-being both individually and collectively as peoples.

To understand the basis of Aboriginal spirituality in relation to land it is necessary to understand a totally different way of living and thinking. The connection between land and religion is largely absent in European societies, where land is mostly a commodity to be bought and sold.

‘Our story is in the land’

Our claim to a special connection with the land is supported in a vast anthropological literature and has been endorsed by two major modern inquiries into Aboriginal land issues: by Justice Woodward in the Northern Territory (1973–74) and Paul Seaman QC in Western Australia (1984).

The relationship was established in what is now generally called the ‘Dreaming’ or ‘Dreamtime’ when the land was created by the journeys of the Spirit Ancestors. In the words of Bill Neidjie, a respected Kakadu elder: ‘Our story is in the land ... it is written in those sacred places ... My children will look after those places, that’s the law.’

From the very beginning of British settlement it was observed that particular groups of Aboriginal people claimed identifiable areas as their own, though these claims were disregarded in the process of settlement.

Aboriginal concepts and systems of land tenure differ greatly from European legal models. Complex social systems were and are expressed in particular attachments to country. The basic land-owning unit is the clan — a local descent group, larger than a family but based on family links through a common (usually male) ancestry. For the Northern Territory Justice Woodward noted that ‘everywhere the religious rites owned by a clan were the “title deeds” to the land and could only be celebrated by clan members’. Induction into the clan is through descent, is invested at birth and is inalienable — ‘the link between an Aborigine’s spirit and his land is regarded as being timeless’.

The connection between a clan and its land involves both rights and duties — rights to use the land and its products, and duties to tend the land through the performance of ceremonies.

Individuals may also have special relationships to particular places. For example, the place where a person’s mother first became aware of her pregnancy (seen as the place of conception) and the place where that person was born may involve the individual in rights and duties towards those sites.

‘Dreaming tracks’ of Ancestors significant to one group usually extend into the territories of other groups, interlinking the land associations of the wider community. If a particular land-owning group decreases or dies out, there are mechanisms by which the land can pass to a related group.

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Failure to observe the laws of the land and interference with its spiritual places have consequences not only for the land but also for the people charged with its maintenance. This system of beliefs made Aboriginal people all the less adapted to what happened after 1788. As Stanner wrote in his Boyer Lectures, the people faced 'a kind of vertigo in living':

When we took what we call 'land' ... it left each local band bereft of an essential constant that made their plan and code of living intelligible. Particular pieces of territory, each a homeland, formed part of a set of constants without which no affiliation of any person to any other person, no link in the whole network of relationships, no part of the complex structure of social groups any longer had all its co-ordinates.

The Torres Strait has its own particular systems of land tenure. The system on Murray Island was extensively documented in the taking of evidence for the *Mabo* case.

Changing values

Aboriginal culture and land-holding patterns have been severely disrupted over the last 210 years. Land may now be viewed in any number of different ways, including as an economic resource and a base for development and enterprises.

In 'settled' Australia communities may be attached to ex-reserves and missions. Even reserves long revoked retain a hold on the descendants of people who once lived there. Other groups retain a connection to what had been their traditional land. The first native title determination on mainland Australia related to the Dunghatti people's land at Crescent Head in coastal New South Wales. The demand for the return of some land is basic to modern Aboriginal politics.

In remote northern and central Australia, settlement was less disruptive to traditional systems. Many groups have been able to continue their ceremonial duties. However, as Seaman observed for Western Australia, only a proportion of the population may be able to live on their own land — 'and then will very frequently be accommodating other Aboriginal people who have been forced off their traditional lands'. He noted 'an enormous local complexity of arrangements between various ...groups who have been thrown together by events'.

Seaman was troubled by the notion that only Aboriginal people who fitted a narrow definition of traditional would be able to establish claims to land. He proposed a broader definition of tradition, assuming that whatever the tradition was at contact, 'it was and is a living and adapting tradition, and has adapted'. This would validate attachments to land based on long-term residence or use.

Wherever we may live, all Aboriginal people have retained the core elements of our spiritual association to land and this association is an assertion of our Aboriginality.



Whilst the particular priorities with respect to land differ between Aboriginal people, they are united in their view that land, whether under the banner of land rights or not, is the key to their cultural and economic survival as a people.

Royal Commission into Aboriginal Deaths in Custody, 1991

“Sacred sites are made up.”



The fact is that ‘sacred sites’ within the landscape are an essential part of Aboriginal people’s very different kind of religious beliefs.

Sacred sites

Aboriginal spirituality is based on creation stories describing the way the Ancestors left their marks on the land. Particular stories are manifest in particular landscapes, so that, in the words of the Social Justice Commissioner, ‘Access to our culture entails access to the places of its source and practice’. Some country, as a result of its mythological associations, is more important than other country, but all country is of some importance. This local perspective put Aboriginal groups at a great disadvantage when they came up against a people whose religion was based on more abstract universal principles.

Different land-holding groups are the custodians of different stories. But knowledge is not distributed equally within a group. It depends on a person’s age, or status, personal relationship with a site, or sex. In many areas there are separate spheres of men’s and women’s stories. Knowledge of the law and of the Dreaming stories is acquired progressively as people proceed through life. Ceremonies, such as initiation ceremonies, are avenues for the passing on of knowledge.

Knowledge of sacred sites is, by definition, not public knowledge. This is why the existence of many sites might not be broadcast to the wider world until they are threatened. This is also why, when places are threatened, we may not want to reveal a great deal of information about the site, because to do so would be against our tradition.

The secret-sacred aspects of Aboriginal religion have put us at a grave disadvantage in ‘proving’ our claims. Though some of the stories have been recorded by anthropologists or told in various land-claim hearings, access to the information is restricted and the living tradition is primarily an oral one. This does not mean that the body of knowledge is unchangeable — quite the reverse. It is a living and adapting tradition, but grounded in a system which sees the knowledge as reaffirming immutable truths.

Other sites

Religious sites are not the only ones we are now anxious to protect. Because of the destruction of traditional life over areas of intense European settlement, sites indicating Aboriginal people’s past presence in the landscape have acquired a special significance. These include art sites and stone arrangements, old camp sites and technological sites such as axe-grinding grooves, stone or ochre quarries or ‘canoe trees’. Burial sites and skeletal remains are particularly revered.

Contact sites, occupied by Aboriginal people after European settlement, are also important. They include missions, reserves, cemeteries, the sites of battles or massacres, or locations associated with political events or movements.

FACT

Heritage legislation

The importance of certain sites to Aboriginal people has been acknowledged for many years now in State and Territory heritage acts. The States and Territories have primary responsibility for land use and heritage matters, and maintain the various registers of Aboriginal sites.

In 1984 the Commonwealth enacted the Aboriginal and Torres Strait Islander Heritage Protection Act to provide a last resort for people or groups wanting to protect places or property where State or Territory processes had failed.

Since the passage of this legislation:

- around 200 applications have been lodged under the Act;
- there have been eight declarations relating to the protection of objects of significance to Aboriginal people;
- emergency (i.e. temporary) declarations relating to five significant Aboriginal places have been made; and
- there have been five long-term declarations for the protection of significant areas. Only two remain, however, one protecting significant sites under threat from a flood mitigation dam in the Northern Territory and another (with effect from July 2000) protecting Boobera Lagoon in northern New South Wales.

The benefits of this legislation should not be measured only by the number of declarations that have been made. It has been effective in persuading developers to consider Indigenous sites of significance, and no major developments or mining projects have been halted.

Outcomes have been negotiated, and the States and Territories compelled to focus on the shortcomings of their own Indigenous heritage legislation.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* has been under review for some time. New legislation is expected to be enacted in 1999. As currently drafted, the legislation would allow the Commonwealth to accredit State/Territory legislation and limit its own involvement to applications involving the 'national interest'. This would effectively remove the Commonwealth's obligation to provide 'last resort' protection.



The Australian continent is criss-crossed with the tracks of the Dreamings: walking, slithering, crawling, flying, chasing, hunting, weeping, dying, giving birth. Performing rituals, distributing the plants, making the landforms and water, establishing things in their places, making the relationships between one place and another. Leaving parts or essences of themselves ... Where they travelled, where they stopped, where they lived the events of their lives, all these places are sources and sites of Law. These tracks and sites, and the Dreamings associated with them, make up the sacred geography of Australia; they are visible in paintings and engravings; they are sung in the songs, depicted in body painting they form the basis of a major dimension of the land tenure system for most Aboriginal people. To know the country is to know the story of how it came into being, and that story also carries the knowledge of how the human owners of that country came into being.

Deborah Bird Rose, *The Nourishing Terrains of Aboriginal Australia*, 1995

"Aboriginal people have got too much land already."



The fact is that it is we Aboriginal people who have lost our land. European settlers dispossessed our people without negotiation or compensation in all but the more remote areas of Australia.

The modern land rights movement began in the 1960s. It received great impetus from further acts of dispossession, or attempted dispossession, in northern Australia where it could be seen that Aboriginal groups' connection to their land was profound and unarguable, even if it was not then recognised under Australian law.

Since that time, governments have passed special acts of parliament granting Aboriginal groups interests in land. This legislation varies from State to State, and can be compared on a number of bases:

- the actual area handed over to Aboriginal ownership;
- the type of title established, e.g. inalienable freehold, leasehold, etc.;
- whether or not it sets up a process under which Aboriginal groups can claim land;
- whether it funds such a claims process; and
- the subsidiary rights granted, such as rights to have a say over mining and other developments.

In all cases title has been vested in Aboriginal land trusts or other similar incorporations.

A great deal is made of the fact that Aboriginal people comprising about 2 per cent of the national population now own about 14–15 per cent of Australian land. Much of this land, however, is in areas of the Northern Territory and South Australia that are regarded by non-Aboriginal people as desert or swamp. They have been able to be returned to traditional ownership precisely because of their very low commercial value. Almost all of Australia's most productive lands have been alienated permanently from their original owners, and land grants in settled Australia are confined mostly to the sites of former Aboriginal missions and reserves.

Land rights legislation by State and Territory

For the **Northern Territory** the Commonwealth enacted Australia's most significant land rights legislation on all the above criteria. The *Aboriginal Land Rights (Northern Territory) Act 1976* has resulted in about 42 per cent of the Territory becoming Aboriginal land under inalienable freehold title.

Former reserves were granted immediately the Act came into force. Additional areas have been acquired since through negotiation or, principally, through a claims process. Claims could be made only on unalienated Crown land on the basis of 'traditional ownership'. Claims are prepared by Aboriginal Land Councils

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set up under the Act, and heard by an Aboriginal Land Commissioner. The cut-off date for the lodgement of claims was 4 June 1997.

Under the legislation traditional owners must consent to mineral exploration, but not to mining. Royalty equivalents from mining on Aboriginal land are paid into the Aboriginals Benefit Reserve. The ABR funds the operations of land councils, compensates those communities directly affected by mining and is used also for the general development of Aboriginal communities in the Northern Territory.

A comprehensive review of the Land Rights Act, *Building on Land Rights for the New Generation*, otherwise known as the 'Reeves report', was presented to the Government in August 1998. Its recommendations would substantially change the current arrangements, and are now the subject of consultation.

In the pastoral districts of the Northern Territory, Aboriginal land needs have been accommodated only to a very limited extent through the excision of small living areas from pastoral leases. This process is ongoing.

South Australia contains the second largest areas of Aboriginal land in the Pitjantjatjara and Maralinga lands (granted in 1981 and 1986 respectively) in the far north and west of the State. Areas of the Maralinga lands were regarded as of so little value that they were the site of British nuclear testing in the 1950s and are still contaminated. Elsewhere in the State small areas, including nearly all the former mission/reserve sites, are held on behalf of Aboriginal people by the Aboriginal Lands Trust of South Australia, set up in 1966.

In **New South Wales** the *Aboriginal Land Rights Act 1983* set up a system of land councils that received inalienable freehold title to areas (mostly former reserves) held by the former Aboriginal Lands Trust. They are also able to claim or purchase other land. Claims may be made to Crown land so long as it is not lawfully used or occupied and not needed, or likely to be needed, for any essential public purpose. Certain mineral and hunting and fishing rights are vested in the land councils. In addition, the Act established a fund (from annual payments until 1998 of 7.5 per cent of gross State Land Tax revenue), half of which is set aside as capital to finance Aboriginal development in the future with the balance meeting the costs of land council administration and land purchases.

Queensland enacted an Aboriginal Land Act and a Torres Strait Islander Land Act in 1991. Under this legislation communities obtained freehold title to former reserves held previously under deeds of grant in trust. There is also a very limited claims process — parcels of claimable land, mostly national park or unalienated Crown land, are gazetted from time to time.

Western Australia has the most limited land rights legislation of all the States with a significant Aboriginal presence in remote areas. Legislation in 1972 vested former reserves in an Aboriginal Lands Trust. The 1984 Seaman inquiry gave rise to a land rights bill that was defeated in the Upper House. As an alternative, the then government advanced a package of measures, including the purchase of some land, and the establishment of leases by which Aboriginal people hold (mostly former reserve) land.

In **Victoria** and **Tasmania**, small parcels of land, either former reserves or other historic sites, have been granted to the Aboriginal community.

[There is] a very frequently expressed Aboriginal viewpoint that Aborigines should not have to beg for what is theirs by moral right.

Desert people find it very difficult to understand that the State is able to assert sovereignty over what they know are their traditional lands.

No Aboriginal submission made in writing or at a hearing has suggested that freehold title should be resumed from non-Aboriginal people, nor has it been suggested that pastoral leases should be terminated forthwith. No matter how Aboriginal interests express the Aboriginal position, their claims all acknowledge the political reality that the broader community holds their future in its power.

Paul Seaman, QC, *The Aboriginal Land Inquiry, 1984*

“There is no point in buying land for Aboriginal people.”



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The fact is land acquisition programs are a means to buy back some previously alienated land, and to provide a base for the economic, social and cultural development of Aboriginal communities.

Land acquisition programs (with complementary funding for land management and development) have been part of Commonwealth policy since the early 1970s. They acknowledge the limitations of the land rights acts outlined on the previous pages.

Providing for land acquisition

Justice Woodward's inquiry into Aboriginal land needs in the Northern Territory (1974) recommended the establishment of a national fund for land acquisition, though the first purchases were made before his inquiry. Since then, a series of agencies have been responsible for buying land on behalf of Aboriginal people. ATSIC had a Land Acquisition Program from 1990 to 1997, and received additional funds for this purpose through the Commonwealth's response to the 1991 report of the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission urged governments 'to provide a comprehensive means to address land needs of Aboriginal people'.

This issue was again in the spotlight after the *Mabo* judgment in 1992. In recognising native title to land, the justices of the High Court also had to recognise its extinguishment over significant parts of Australia. The *Native Title Act 1993* therefore provided for the establishment of an Aboriginal and Torres Strait Islander Land Fund, recognising that past dispossession would prevent many Indigenous people from asserting native title rights.

Until 2004 the Commonwealth will give annual allocations to establish the fund amounting to \$1016 million in 1994 dollar values. About 66 per cent of the annual allocations will be invested to build the capital base of the fund, and the remainder used by the Indigenous Land Corporation (ILC), an independent statutory authority that has now taken over ATSIC's role in land acquisition and management. After 2004 the ILC will have access to the annual earnings of the fund. The Land Fund itself will remain the property of the Commonwealth.

Types of purchases

At the end of June 1997 ATSIC and its predecessors had purchased some 380 properties for Aboriginal and Torres Strait Islander people. As at 30 June 1998, the ILC had acquired a further 45 parcels of land.

Roughly half of these purchases have been of land supporting broad-acre agricultural and pastoral activities. The remaining properties have generally provided social, cultural or administrative facilities for Indigenous service-delivery organisations. Some are used for commercial activities such as retail or tourism.

Balancing social and economic objectives

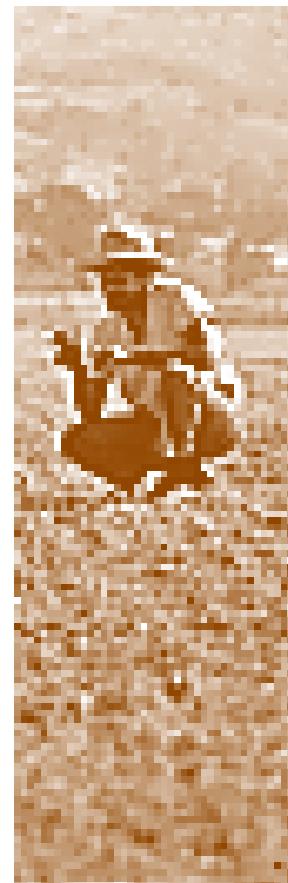
In making acquisitions priority has traditionally been given to properties that might be economically sustainable or provide a base for economic development. In this policy makers have deferred to mainstream values.

But there is also a strong impetus from within the Aboriginal community to purchase land for traditional, social or cultural purposes. There is a simple desire to buy back alienated homelands. In the process areas of degraded pastoral land have passed into Aboriginal hands. Some properties may have been on the market precisely because they were extremely marginal operations in fragile environments, or even effectively abandoned. It cannot be expected that many such properties will be viable in the mainstream economy. In fact, it is nearly always impossible for communities comprising many families to be supported from the proceeds of pastoral activity on stations that had previously been able to support only one or two non-Indigenous families.

Nevertheless the condition of some Aboriginal-owned land has become an issue in the wider political debate. The Indigenous Land Corporation is now assessing Aboriginal pastoral holdings, given the limitations of the corporation's own budget for land management. Those properties that are potentially viable will be given the assistance they need to become self-sufficient. Where this is not possible, the ILC will help landowners to research and develop alternative land uses. An ILC subsidiary has been set up to focus on the skills and expertise needed to support Indigenous land-based enterprises.

Evaluations suggest that economic activity has not necessarily been of central importance for most rural communities acquiring land. Rather it has become one of a range of beneficial activities on Aboriginal land. Even so, land remains an important asset in the quest for Indigenous economic advancement.

Land ownership means a sense of secure place rather than the enduring effects of dispossession, Indigenous control over land use, as well as a base for social and economic development. Seen in this light the Commonwealth's land-acquisition expenditure over 25 years, and the establishment of the Land Fund, represent a very important investment in the future.



The two principles which I am concerned to establish, so far as funding is concerned, are:—

- (a) the setting up of a fund for land purchase which is seen as being by way of compensation to those Aborigines who have lost their lands, and
- (b) the use of the same fund or a parallel fund for the economic development of land for Aborigines in cases where loan monies are inadequate to meet the requirement.

The existence of such funds would enable the recovery of some traditional lands, the purchase of other lands which have some meaning for Aborigines (perhaps because of long association) where traditional connections have been broken, and assistance in the appropriate development of all lands for Aborigines, whether held by traditional owners or not.

Justice Woodward, Aboriginal Land Rights Commission, Second Report, April 1974, paras 259–60

“The Mabo judgment is a threat to other landholders.”



The fact is the *Mabo* judgment extended common law rights to Indigenous people that have been available to other Australians for over 200 years.

According to six out of seven judges on the High Court, Indigenous property rights — ‘native title’ — survived the Crown’s annexation of Australia. Though the case itself

dealt with Murray Island (Mer) in the Torres Strait, the judges enunciated general principles that were to apply throughout Australia.

(The common law is the system of judge-made law, inherited from England, that exists side by side with statute law.)

The end of *terra nullius*

In *Mabo* the High Court overthrew the legal fiction of *terra nullius* which held that Australia had ‘belonged to no one’ at the time the British arrived. The law caught up with the reality that an Indigenous society existed in Australia in 1788, and that Indigenous people (who became subjects of the Crown) had rights within Australia’s introduced legal system.

But the court also held that native title had been validly extinguished by governments over the vast majority of areas where most non-Indigenous Australians now live and work. Native title is therefore no threat to private property. It cannot displace privately owned homes or other private property, such as farms, or commercial or residential property, most of which is held under freehold title.

The judgment confirmed that the ultimate right to dispose of the land lay with governments. The assertion of sovereignty gave the British Crown, and subsequently the various governments of Australia, radical title to the land — that is, the underlying right to control or administer the land — but not exclusive ownership. Native title existed in 1788, and may continue to exist, subject to the power of governments to validly extinguish it.

The judges also said that native title is extinguished if Indigenous groups have not maintained a connection with their land according to their traditional laws and customs.

In countries similar to Australia native title has long been recognised — in eastern Canada since the eighteenth century and in New Zealand since the Treaty of Waitangi in 1840.



Putting native title into practice

The *Mabo* judgment raised many questions — a fact that has always been exploited by those opposed to it. Putting native title into practice around Australia requires a process of research, consultation and mediation to eventually resolve a number of issues, including:

- which precise areas of land are still subject to native title, and
- which Aboriginal and Torres Strait Islander people are the legitimate holders of native title rights.

To help resolve these issues the Commonwealth legislated the Native Title Act in 1993 and amended it in 1998. An outline of this Act is provided on the next page.

Native title rights themselves were not precisely defined in the *Mabo* judgment. The High Court said that native title was held according to the traditional laws and customs of people having the relationship with the land. This may involve responsibilities for the land not encompassed by Western systems of ownership.



Where does native title still exist?

Native title continues to exist in areas where it has not been extinguished by government action and where Indigenous people have maintained the necessary connection with their traditional land. This covers a variety of lands, including vacant Crown land or other public land, national parks, public reserves, mining tenements, and waters.

In 1992 the High Court said that native title may co-exist with other interests, including the Crown's radical title. In its 1996 *Wik* decision, the Court held that it may co-exist on land held under a pastoral lease. In the Croker Island case (1998) a justice of the Federal Court found co-existing native title over areas of sea.

Which particular government acts extinguish native title has been a contentious issue during and after the process of amending the Native Title Act. There are still test cases before the courts.

The right to compensation

In the *Mabo* judgment a majority of the High Court held that, at common law, extinguishment before 1975 did not require compensation to be paid. After 1975 the operation of the *Racial Discrimination Act 1975* means that extinguishment of native title must be on the same terms as other acts of extinguishment. The Constitution requires the Commonwealth to pay 'just terms' for the acquisition of property from States or individuals. Though the States are not subject to this provision, they are constrained by the *Racial Discrimination Act*.

The Native Title Act therefore provides for compensation to native title holders for loss of native title after 1975.

Mabo simply recognised that this continent once belonged to many Aboriginal peoples, each part being occupied by a particular group who had customary rights to it. Over two centuries most of it had been irretrievably taken from them piece by piece without compensation. Where this had happened, it could not now be undone. But, through all the travail of 200 years, some groups had managed to maintain their connections with their land, usually because it was in a remote area and was so economically uninviting that no white person wanted it. Simple justice required that the law respect their rights, no less than it respects the rights of other Australians who have inherited land.

Hal Wootten, *Sydney Morning Herald*,
July 1993

"The Native Title Act gives too much to Indigenous people."



The fact is the *Native Title Act 1993* was necessary to resolve a number of land management matters left unresolved by the *Mabo* judgment.

The Act represented a balance of rights and interests, providing protection of Indigenous rights while establishing processes to allow development and other uses of land.

After a lengthy and at times heated debate, the Act was amended in 1998. The amended legislation, most provisions of which came into force on 30 September 1998, streamlines procedures, but also winds back the rights of Indigenous people.

A carefully constructed balance of interests

The original Native Title Act resulted from an intense process of consultation and negotiation that necessarily produced compromises.

In the 1993 negotiations after *Mabo*, Indigenous representatives made significant concessions to provide certainty for other groups. They agreed to the validation of titles which had been granted since 1975 and which may have been invalid due to the operation of the *Racial Discrimination Act 1975* — because Indigenous landowners had not been fairly compensated for loss or impairment of their rights.

In turn, the Commonwealth agreed to a Right to Negotiate over future uses of land potentially subject to native title. This is not a right to veto development. The question of the possible survival of native title on pastoral leases was left to the courts to decide.

The Commonwealth also agreed to establish the Indigenous Land Fund and implement a series of social justice measures to acknowledge that the processes of history had dispossessed and disadvantaged many Aboriginal people. Under the NTA, the Land Fund was set up to help those who could never assert native title rights — it was a recognition of past extinguishment.

The social justice measures are not acknowledged in the policy statement of the current Commonwealth Government.

Claiming native title

An immediate problem raised by the *Mabo* ruling was how Indigenous people were to prove they had surviving native title rights. The *Mabo* case itself had taken 10 years, and a multitude of court cases was bound to become very expensive and time-consuming.



To provide a cheaper and more accessible alternative, the Native Title Act established a National Native Title Tribunal (NNTT). After a claim is lodged in the Federal Court, it is referred to the NNTT for mediation. If the claim is unopposed, the Federal Court can make a consent determination of native title. If the parties cannot agree, the claim is also referred to the Federal Court for a full hearing.

The Right to Negotiate

The Native Title Act protects native title to some extent by allowing claimants a Right to Negotiate over developments on their land. They have to be informed and consulted in advance about government acts such as the granting of a mining tenement or compulsory acquisition of the land for a third party.

The Right to Negotiate has been depicted as a special right given to Indigenous people over and above the rights of other Australians. From the Indigenous perspective, however, it acknowledges that we have an attachment to land that involves cultural and spiritual, and not just economic, aspects. It is intrinsic to our common law native title rights.

The amended Native Title Act restricts the Right to Negotiate in various ways. It no longer attaches to certain acts, and the States and Territories are allowed to replace the Right to Negotiate on pastoral lease land with certain minimum procedural rights.

Native title holders must also pass a more stringent registration test to access the Right to Negotiate.

The operation of the Native Title Act

There was much criticism of the original Native Title Act, focusing on its slow processes or even 'unworkability'. At June 1998 more than 800 native title claimant applications had been lodged with the NNTT, but only two determinations of native title made in the Federal Court.

The Native Title Act was, however, operating in a particularly complex and contested area. Many of those calling the Act unworkable may never have made a genuine effort to work within its provisions. The first President of the NNTT, Justice Robert French, accused some players of engaging in 'strategic behaviours designed to affect the outcome of the amendment debate' to the detriment of native title processes. Certain State Governments granted interests in land without reference to the Act.

Nevertheless, the Tribunal's first national audit of native title agreements, released in September 1998, revealed that over the previous five years more than 1200 agreements had been struck between Indigenous groups and miners, pastoralists, industry bodies and governments. Agreements, and the development of a culture of agreement-making, are just as significant outcomes of the NTA as formal determinations of native title.

... there is no point in native title existing only in name. For it to have any meaning to Indigenous people — and indeed to the Australian nation as a whole — then native title must be seen for what it is.
It is a special form of land title.
It represents a form of ownership in accordance with Aboriginal law — it's spiritual attachment to land, it's many things that can't be defined in Western law, as well as those that can, like a right to fish or hunt, or reside or conduct religious ceremonies.
Native title is about family and community.
It is about country, culture and law.
It is about the right to live and die on traditional country.
It is about the right to visit the graves of your forebears.
It's about the right to teach your children their responsibilities as traditional owners.
It is about our fundamental rights as Indigenous people.
Native title was not created by the High Court in the Mabo decision. It was recognised by the High Court — not created.

Peter Yu, Executive Director of the Kimberley Land Council, September 1997

“The Wik judgment means farmers can’t farm.”



The fact is the High Court's *Wik* decision said that native title may continue to exist on land the subject of a pastoral lease, and so recognised at law the historical reality of co-existence between Aboriginal and non-Aboriginal people on Australia's pastoral rangelands.

Pastoral leasehold has always been a special, non-exclusive form of title, devised in part to protect the interests of Aboriginal people. And the judgment plainly said that in the event of any conflict between the pastoralist's and native title rights, the pastoral interest prevails.

The *Wik* case was launched to test an issue left unresolved in the *Mabo* judgment. Its outcome surprised and discomfited many in rural Australia, and the resultant 'uncertainty' was often invoked during debates on amendments to the Native Title Act.

About pastoral leases

Land under a pastoral lease remains Crown land. A pastoral lease gives the leaseholder the right to use the land for pastoral purposes, including raising livestock and developing the infrastructure necessary for pastoralism — fences, yards, bores, accommodation, etc. Other activities, such as broad-acre cropping and land clearing, may be prohibited. Lease terms and conditions vary according to the different State Land Acts, and the terms of individual leases.

The system of leasehold tenure developed last century to control the activities of squatters and to protect the livelihood of Indigenous people. As Justice Toohey said in the *Wik* judgment, the evolution of this form of tenure 'reflects the desire of the pastoralist for some form of security of title and clear intention of the Crown that the pastoralist should not acquire the freehold of large areas of land, the future use of which could not be readily foreseen'.

The protection of Indigenous rights was an explicit part of British policy last century. As Earl Grey, British Secretary of State, wrote to the Governor of New South Wales in the 1840s: '[Pastoral leases] give only the exclusive rights of pasturage in the runs, not the exclusive occupation of the land, as against Natives using it for their ordinary purposes.'

Pastoral leases cover about 40 per cent of the continent — the arid and semi-arid rangelands of inland and tropical Australia. Because rangeland pastoralism is a low-intensity land use, individual pastoral enterprises may occupy vast areas of land. For example, the Holroyd River lease in the *Wik* case covered approximately 2830 sq kms and its carrying capacity was one beast for every 60 acres.

The size of the runs also means that relatively few producers are involved. They vary from family operators to extremely wealthy individuals and corporations. In areas such as the Kimberley Aboriginal people are major stakeholders in the pastoral industry.



Co-existence: informal and uncertain, or genuine?

Pastoralism resulted in the dispossession of Aboriginal people over vast areas of Australia. Nevertheless, communities were still present in this country, and an informal and unequal co-existence between Aboriginal and non-Aboriginal people developed in the pastoral rangelands. In many areas cheap (even unpaid) Aboriginal labour allowed the industry to be established and survive.

In this way Aboriginal groups maintained contact with their land and its ceremonial life. In relatively recent times the advent of equal pay and mechanisation has resulted in some groups being forced off their land. Some Aboriginal people have informal access agreements with pastoralists, or may have been able to obtain small living areas 'excised' from the lease. Others are locked out of their country, though they retain strong attachments to it.

The *Wik* judgment did no more than recognise that Aboriginal people had some co-existing rights in their land capable of being recognised by Australian law. According to Peter Yu, Executive Director of the Kimberley Land Council, it 'accepted the real history of this nation — that Aboriginal people and pastoral leaseholders have always shared the country, even if that co-existence has not always been peaceful'. In this way the judgment was the essence of reconciliation.

Equal rights?

During the process of amending the Native Title Act (1997–98) the National Indigenous Working Group proposed a formal process of co-existence that would recognise the rights and interests of all having a stake in the pastoral rangelands.

But the Government's position was that Aboriginal groups should have the same rights as pastoralists in relation to mining on their land — i.e. no Right to Negotiate.

In the event the amended NTA allows the States and Territories to replace the Right to Negotiate with lesser procedural rights. And pastoralists may apply to upgrade their current limited rights of pasturage to permit a broad range of higher intensity 'primary production activities'. There is no requirement for consultation or negotiation with affected native title holders.

The Miriuwung Gajerrong decision of the Federal Court (November 1998) said that native title rights inconsistent with pastoralists' rights were merely suppressed for the duration of a lease. During the native title debate, the Government took the view that these rights were extinguished, though under the Howard–Harradine agreement the matter was left to the courts to decide. This and other aspects of the Miriuwung Gajerrong judgment are being appealed by the Western Australian Government.

It is wrong and utterly misleading to equate pastoralists with progress and Aborigines with backwardness....
Aborigines not only share Australia's pastoral heritage, they shaped it. Traditional lands have become cattle country and many Aborigines embrace the change as part of their lives and their people's histories ... They incorporated aspects of cattle culture into their own, combining a bush and station lifestyle not in a partial 'adaptation' but in a creative breakthrough.
The *Wik* decision ... potentially enables Australians to embrace our full bush heritage. National institutions like the Stockman's Hall of Fame thus have the exciting scope to explain a more positive and more inclusive national story: one of creative adaptation and dynamism, where Indigenous and other Australians pioneered economically productive, co-operative, though in the long run, tragically unequal relationships.

Ann McGrath, from 'The history of pastoral co-existence', in the Aboriginal and Torres Strait Islander Social Justice Commissioner's Native Title Report, July 1996–June 1997

“Native title stops development and locks up land.”



The fact is Aboriginal people need land in order to participate in economic development. The Right to Negotiate provisions of the Native Title Act have given many of our communities their first opportunities to control the protection of their culture and to be involved in economic activity on their land.

Past development took very little account of the rights or concerns of Indigenous people. As Stanner wrote in 1968: ‘The map [of Australia] is disfigured by hundreds of miserable camps which are the social costs of old-style development that would not let any consideration of Aboriginal interest stand in its way.

Development over the next fifty years will have to change its style and its philosophy if the outcome is to be very different.’ He also wrote of the large-scale resource development then occurring in tropical Australia: ‘If Aborigines have no prospects within it they have no prospects outside it.’

In general, once Aboriginal people have achieved secure tenure to their land — e.g. under the Northern Territory Land Rights Act — they have not been obstructive or antagonistic to development, nor hostile to the interests of other parties. Many Aboriginal land owners and communities have welcomed the opportunity for appropriate development on their country, seeing the potential for escape from entrenched poverty. Successful Indigenous enterprises such as those of the Jawoyn Association at Katherine and the Yolgnu enterprises in east Arnhem Land are based on land ownership.

Native title processes may provide eventually for the economic development of many Indigenous communities and lead them out of welfare dependence — a long standing aim of Indigenous affairs policy.

The Aboriginal experience: adding value

‘Old-style development’ has always been based on the assumption that our people’s relationship to the land is of no economic consequence, that land can only be ‘developed’ along non-Indigenous lines. In the modern world, this is no longer necessarily the case. Society now places more value on natural environments and on cultural relationships with land that can be the basis for industries such as tourism. For some of the more marginal pastoral areas it is argued that the pastoral values are almost non-existent and certainly inferior to value added by Indigenous people’s relationship to the land.

The Right to Negotiate

Under the amended Native Title Act, the Right to Negotiate may still apply when a government wishes to grant an exploration licence or a mining tenement or compulsorily acquire native title for the benefit of a third party. For pastoral lease land, however, most States and Territories have moved to replace the Right to Negotiate with lesser procedural rights.



It is now also more difficult to access the Right to Negotiate because of the stricter registration test on claims.

The Right to Negotiate has never been a right to say 'no', and was already favourable to resource developers through a number of provisions.

There is a six-month time limit on the period of negotiation and, if no agreement is reached, the matter can be referred to the National Native Title Tribunal (or equivalent State/Territory body) for compulsory arbitration. Even then, government ministers have the power to override the arbiter's ruling 'in the national interest'.

Native title holders are under some pressure to accept proposals put before them during the negotiation phase, because of limitations on the terms of compensation that may be awarded if the matter goes to arbitration.

For acts having a low impact on native title the States/Territories may apply to the Commonwealth to replace the Right to Negotiate with a consultation scheme.

Negotiation in good faith

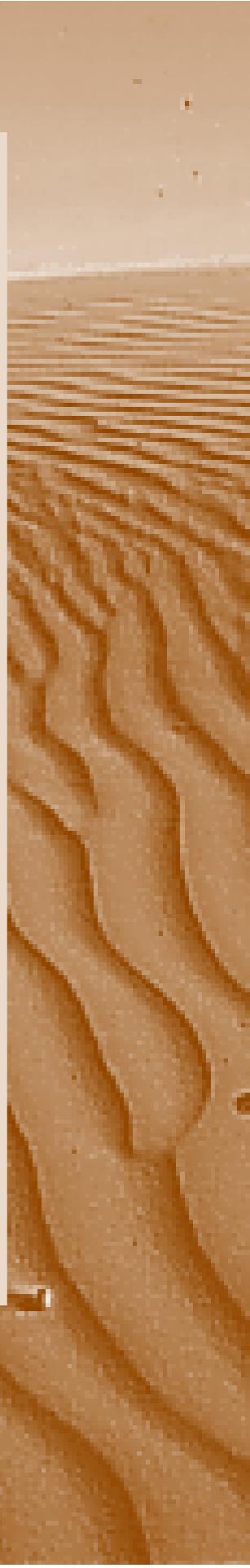
Around Australia there is now overwhelming evidence that those who approach native title in good faith are getting results. Companies are negotiating agreements with Indigenous people for mutual benefit, and avoiding confrontation and protracted litigation. For local communities the agreements may provide for employment and training as well as economic and social development packages. Here are just a few examples:

- the finalisation in March 1997 of a unique regional land use agreement between Hamersley Iron and Gumala Aboriginal Corporation, paving the way for the Yandicoogina iron ore mine in the Pilbara, WA;
- Alcan's March 1997 Heads of Agreement with the Weipa community in Cape York, for a proposed bauxite mining and shipping operation;
- the finalisation in May 1997 of the agreement to allow the giant Century Zinc mine to proceed in Queensland's Gulf Country;
- the signing of an agreement in August 1997 between five Aboriginal groups and 14 mining companies clearing the way for mineral exploration in south-west South Australia;
- a deal crossing two States to enable the construction of a gas pipeline between Gippsland and southern New South Wales;
- an agreement between Kimberley Aboriginal people and the diamond company Striker Resources, covering an area of 27,000 sq kms north-west of Wyndham, which guarantees the local people jobs and financial compensation.

Dr Ian Manning, in two reports published in 1997 and 1998 respectively, found little evidence that native title had reduced mining investment, despite claims to the contrary. Out in the bush, Dr Manning wrote, 'the industry was learning to live with native title, and even to turn its requirements into an advantage, not only for Aboriginal peoples and for the remote regions of Australia, but for the industry itself'.

A minority of Indigenous Australians may have certain residual rights in respect of some lands. For more than two centuries Australian governments and others have proceeded on the convenient assumption that this was not the case. It is not surprising that it is taking time for them to adjust to a revised situation. But governments and industry groups in other parts of the world, such as North America, have long acknowledged the need to deal with the Indigenous peoples, and have managed to prosper. Recognition of native title does not mean the end of Western civilisation or economic progress, as some of the more excitable political leaders would have us believe ... Now that the umpire has given its decision in the Wik peoples' case, politicians might find themselves surprised by the willingness of Indigenous Australians and industry leaders to move on from there and to propose reasonable agreements that offer win-win solutions.

Garth Nettheim, *Sydney Morning Herald*, January 1997



A perceived underlying cause of social inequity is racism and lack of care by mainstream Australians. Defined in various ways racism is most commonly described as the creation or perpetuation of negative stereotypes, often based on isolated personal incidents, hearsay or media reporting. Many research participants acknowledge that racism is 'rife' in this country and fear it limits the full participation of Indigenous people in Australian society.

Unfinished Business: Australians and Reconciliation, an overview of community attitude research conducted for the Council for Aboriginal Reconciliation, 1996

It is plain to me that Aboriginal people do not intend to be turned into models of suburban white people, but that they are desperate that the broader community should understand their position. They think our version of history is a lie, and that when the true history is known our attitudes, of which they are painfully aware, will change.

Paul Seaman QC, *The Aboriginal Land Inquiry*, 1984

It is the hurt of rejection that so cuts into the soul of Aboriginal people, and there is nothing in my view that Aboriginals desire more than to be accepted. That is why Cathy Freeman, Mark Ella, all of those great footballers hold such pride of place in the Aboriginal community because they've been accepted ... for people to suggest that Aboriginal people do not want to be proud Australians I think is incorrect ... my own view is that Aboriginal people are yearning, are yearning to be included in this great nation of ours ...

Noel Pearson, speaking on Radio 2UE, December 1997



Community attitudes

Relatively few non-Indigenous Australians have much to do with Aboriginal or Torres Strait Islander people in their day to day lives. A lack of firsthand information provides fertile ground for simplistic or false perceptions.

A persistent attitude is to blame problems on Aboriginal behaviour or lifestyles. It is true that there are cultural differences between Indigenous and non-Indigenous Australians, and that there may be severe social problems in some Indigenous communities caused by alienation, cultural breakdown and demoralisation. But these issues call for understanding and an appreciation of their causes in the collective experience of Aboriginal people in this country.



**“Many of them are no darker than me
— the real Aborigines live in the outback.”**



FACT

The fact is Aboriginality cannot be defined by skin colour or percentages of Aboriginal ‘blood’.

Old definitions

Definitions of Aboriginality based on percentages of ‘blood’ were used for decades by government departments and produced results that were both brutal and inconsistent. The historian Peter Read has described one such set of results:

In 1935 a fair-skinned Aboriginal man of part Indigenous descent was ejected from a hotel for being an Aboriginal. He returned to his home on the mission station to find himself refused entry because he was not an Aboriginal. He tried to remove his children but was told he could not because they were Aboriginal. He walked to the next town where he was arrested for being an Aboriginal vagrant and placed on the local reserve. During World War II he tried to enlist but was told he could not because he was Aboriginal. He went interstate and joined up as a non-Aboriginal. After the war he could not acquire a passport without permission because he was Aboriginal. He received exemption from the Aborigines Protection Act — and was told he could no longer visit his relations on the reserve because he was not Aboriginal. He was denied entry to the RSL Club because he was Aboriginal.

Child removal policies often targeted children with lighter skin as they were thought to be more ‘assimilable’.

Many Aboriginal people now have both Aboriginal and non-Aboriginal ancestors. This does not make them less Aboriginal. Though policy in the assimilation era might have denied that ‘half-castes’ were ‘Aboriginal natives’, these people were still the subject of special discriminatory laws and practices. Inevitably Aboriginality is as much to do with upbringing, culture and life experiences as it is to do with descent, although descent is obviously essential.

Modern definitions

In the *Aboriginal and Torres Strait Islander Commission Act 1989* and other Commonwealth legislation ‘Aboriginal’ is defined simply as ‘a person who is a member of the Aboriginal race of Australia’. For many years the Commonwealth has also been using a three-part administrative definition:

An Aboriginal or Torres Strait Islander person is a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives.

This three-part definition was accepted by the High Court in *Commonwealth v Tasmania* (1983) and confirmed in *Gibbs v Capewell* (1995). It continues to be the definition accepted by governments and the Indigenous community. In the Tasmanian Aboriginality decision (1998) a judge of the Federal Court took a

more flexible approach to establishing Aboriginal identity, but this was generally not well accepted in the Aboriginal community.

Indigenous peoples

The word 'Indigenous' is these days increasingly used as a term that embraces both Aboriginal people and Torres Strait Islanders. It has also gained currency through international developments, as Indigenous peoples' issues are discussed at United Nations' forums such as the Working Group on Indigenous Populations. The United Nations has no formal definition of Indigenous people, but the Working Group has used the following form of words:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies ... consider themselves distinct from other sectors of the societies now prevailing in those territories ... they form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Changing culture

Those who query Aboriginality often imply that loss of language and traditional cultural practices reduces the authenticity of a person's Aboriginality. This theory argues that Aboriginal and Torres Strait Islander people living in remote areas who continue to speak their traditional languages and practice their traditional culture are more 'authentic' than those who live in country towns or cities.

But cultures are not static. Cultures and lifestyles change, develop and move with technological innovations and outside influences. Just as the cultural norms of non-Indigenous Australians have changed enormously over the past 200 years, so too have those of Aboriginal and Torres Strait Islander people.

Indigenous cultures throughout Australia today are diverse, just as they were before European colonisation. The cultures of Indigenous people in Blacktown, Redfern, Fitzroy and Musgrave Park are no less 'Aboriginal' than the cultures of their counterparts in Cape York, Arnhem Land or the Kimberley.



... many white Australians attempt to deny the Aboriginality of Indigenous people. No matter where the research was conducted, 'real' Indigenous people were always somewhere else. The white Australian seeks a sanitised and homogenised version of the Aboriginal and Torres Strait Islander person. The nomadic desert hunter, tracker, perhaps stockman, is the desirable imagery. The more visible urban dweller is often dismissed as 'whiter than me' ... Labels such as 'half caste' and '1/64th black' are all too easily used and suggest widespread ignorance of Aboriginal people's sense of who they are. Aboriginality, when it is thought about, is many times described as 'a way of getting benefits' rather than a genuine culture of the 1990s. Vague references are made to Aboriginal people's spirituality, affinity with the land, the 'Dreamtime' legends and so on but these are clouded by an 'otherness' which they cannot relate to the visible, local Indigenous population.

From *Unfinished Business: An overview of community attitude research conducted for the Council for Aboriginal Reconciliation, 1996*

“Aboriginal people don’t want to work.”



The fact is that without Aboriginal and Torres Strait Islander labour many of Australia’s most successful industries would not have developed. Today more than 30,000 of our people choose to work on community projects in order to receive the equivalent of their unemployment benefits.

The cattle, fishing and pearling industries in remote Australia were in their formative years almost totally reliant on Indigenous workers. These workers were rarely paid wages. Instead they often received rations for their labour. A ‘little bit of flour, sugar and tea’ was the cost of our employment in these industries. The arrival in the 1970s of equal pay in rural industries saw many Indigenous people lose their jobs.

There also existed legislation that specifically prevented the employment of Indigenous workers in certain industries. For example, the *Commonwealth Post and Telegraph Act 1901* (not repealed until 1961) restricted mail contracts to white workers only. The *Sugar Bounty Act 1903* paid a bounty on sugar produced by all-white labour, thereby discouraging the employment of Pacific Islander or Indigenous workers.

Today, Indigenous unemployment rates vary from community to community. The overall rate is around 26 per cent, compared with around 8 per cent in the general workforce.

Explaining the unemployment rate

There are a number of reasons for our high unemployment rate. Location has an important impact on labour-market opportunities — the more remote an Indigenous community, the fewer available jobs there are likely to be. In recent years, however, employment in some remote and rural areas has actually been increasing due to the expansion of ATSIC’s Community Development Employment Projects scheme. Nevertheless, in remote Australia jobs in the mainstream economy or the private sector are few and far between.

Other factors contributing to high levels of Indigenous unemployment are:

- limited educational opportunities and lower retention rates, contributing to relatively low skill levels;
- an Indigenous working-age population that is increasing at more than twice the rate of the overall working-age population;
- a decline in rural industries that have traditionally been employers of Aboriginal labour; and
- lingering prejudice among non-Aboriginal employers.

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Community Development Employment Projects

Unemployed Aboriginal and Torres Strait Islander people are entitled to Newstart allowances at exactly the same rates as other unemployed Australians.

Yet many of us prefer to work for these entitlements. In more than 250 Aboriginal and Torres Strait Islander communities across the country people have chosen to forego their unemployment benefits in order to work part-time on Community Development Employment Projects (CDEPs) for which they receive the equivalent of Newstart, or even less.

CDEP communities choose their own work activities. These may include housing construction and maintenance, building infrastructure or the development of farms or other businesses. Many CDEPs undertake a range of different projects. Through CDEP many remote communities provide for themselves the facilities and services that local government would supply elsewhere in Australia.

More than 30,000 Aboriginal people and Torres Strait Islanders are presently involved in CDEP projects in both rural and urban areas. Around 40 per cent are women. CDEP accounts for about one quarter of Indigenous employment. Without it the Indigenous unemployment rate would exceed 40 per cent.

Demand for CDEP places has increased to such an extent that there is now a substantial waiting list of people wanting to join the scheme.

CDEP is the Commonwealth's largest Indigenous program. It began in 1977 at the request of several remote communities where people wanted an alternative to the debilitating effects of receiving what they called 'sit-down money'.

The job ahead

Indigenous unemployment is likely to remain high, according to research commissioned by ATSIC. *The Job Still Ahead*, prepared by the Centre for Aboriginal Economic Policy Research and published in September 1998, shows that the growth in jobs for Indigenous Australians is unlikely to keep pace with a rapid rise in the Indigenous working age population. The Indigenous unemployment rate is projected to increase from the present 26 per cent to about 28 per cent in 2006.

These figures count CDEP participants as 'employed'. If the latter were counted as unemployed, then the unemployment rate would climb from a present 41 per cent to 48 per cent in 2006.

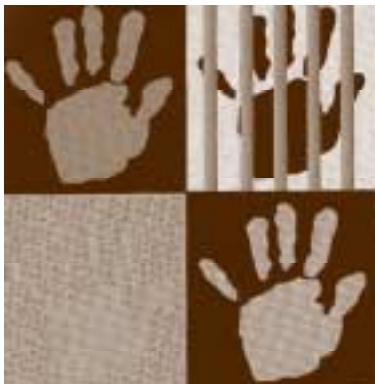
The paper argues for more government intervention in the form of labour market programs: 'To continue business as usual is clearly insufficient in the face of population growth.'

"You are presently being paid unemployment benefits each fortnight. We are asking you to commit to going to work, but you will only be paid the same amount of money that you are getting now. The advantage will be that the work you do will help you to improve the quality of your life and your surroundings. The disadvantage will be that if you don't turn up for work, you will not get paid."

Community advisor,
explaining CDEP



“Aboriginal people are more likely to commit crime.”



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The fact is there are complex reasons for our high levels of over-representation in the justice system, reflecting police and judicial practices, as well as the history and life experiences of Indigenous groups and individuals.

The report *Keeping Aboriginal and Torres Strait Islander People Out of Custody* (August 1996), by Chris Cuneen and David McDonald, summarised a number of inter-locking factors which might lead to over-representation. The material below largely comes from that source.

Socio-economic factors

In every society there is clearly a strong relationship between poverty and crime. The Royal Commission, in investigating the underlying causes for Indigenous over-representation in the criminal justice system, highlighted the role played by unemployment and a lack of educational and other life opportunities in Indigenous communities. Subsequent research is confirming that unemployment and a lack of education are crucial factors in producing over-representation.

Another way of looking at socio-economic disadvantage is through the concept of marginalisation — meaning separation and alienation from work relations, family and other social relations that bind people into communities and give value to lives. Marginalisation gives rise to self-destructive behaviour, including alcohol and other substance abuse, intra-community violence and crime.

Offending patterns

There is some evidence that the nature of the offences committed by Aboriginal people are more likely to lead to police custody and imprisonment. Aboriginal and Torres Strait Islander people are over-represented in virtually every offence category, particularly in offence types involving violence, breaches of justice procedures and driving offences. Patterns of repeat offending also result in closer scrutiny by police and heavier sentences.

The impact of policing

Aboriginal communities may be more extensively, or differently, policed than non-Indigenous communities. Police may intervene in situations involving Aboriginal people in ways that are unnecessary or even provocative.

There are various stages at which police may make choices on how to proceed — for example, the decision to intervene, the use of custody, the use of juvenile diversionary options, decisions to proceed by way of arrest, and decisions on the number of charges laid. The Royal Commission into Aboriginal Deaths in Custody noted that in all these discretionary areas Aboriginal people were likely to be disadvantaged.

The National Inquiry into Racist Violence (1991), conducted by the Human Rights and Equal Opportunity Commission, found that in general ‘Aboriginal–police

relations had reached a critical point due to widespread involvement of police in acts of racist violence, intimidation and harassment'. In the National Aboriginal and Torres Strait Islander Survey 1994, 10 per cent of those surveyed aged 13 years and over reported being hassled by police during the 12 months prior to being interviewed. This increased to 22 per cent among males aged 15–19 years.

Legal factors

Other factors identified by Cuneen and McDonald were proceeding against Aboriginal people using specific legislation, decisions on bail and bail conditions, and judicial decision-making in general. For instance, it is suggested that Aboriginal people do not receive the full benefits of non-custodial sentencing options, perhaps, according to Royal Commissioner Elliott Johnston, because of a 'belief held by judges that Aboriginal offenders are either less able or less willing to comply with the requirements of non-custodial orders'.

Cultural difference

Aboriginal people have different values and practices to non-Indigenous Australians, which can disadvantage them in a justice system that works according to mainstream assumptions.

Aboriginal people may have difficulties based on language and culture during police interrogation and in courtroom procedures. Their cultural practices may even lead to criminalisation — for example, through the policing of social activities occurring in public places. As *Keeping Aboriginal People Out of Custody* commented: 'A central problem is whether non-Indigenous criminal justice institutions fail to recognise and value Indigenous methods of social organisation or whether they in effect treat cultural difference as a social pathology and criminalise it.'

Defiance

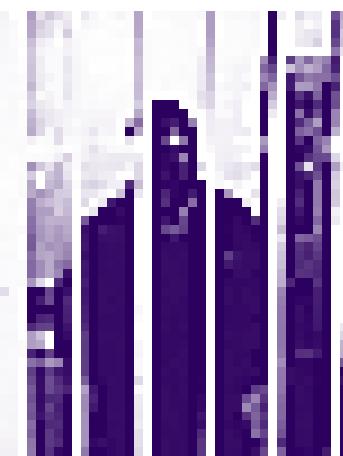
There can be no doubt that a significant proportion of offences committed by Aboriginal people are motivated by a desire to flout authority. A number of researchers have concluded that some property offences, vandalism and so-called 'offensive' behaviour can be understood as forms of resistance. This may be particularly true of the behaviour of young people.

Other offences that might be considered aspects of resistance are breaches of court orders. They might represent a refusal to comply with what are thought to be unjust levels of intervention, and echo the passive resistance that once took place on reserves.

There is also evidence that, in some areas, going to prison or juvenile justice institutions has become a new form of 'initiation' for some young Aboriginal men. They find status in being processed by the criminal justice system, and thus assert themselves in a world which generally offers them little hope or opportunity.

We have to move now to stop our youth haemorrhaging from their homes to far away lock ups. We have to understand the bigger picture, the forces that shape lives and link the 'offenders' and the 'offences' with their wider generative causes. Any response to juvenile crime which concentrates on the criminality of the offender and which fails to address structural inequalities will necessarily have limited impact Indigenous Australians are largely excluded from the practical enjoyment of the same rights as enjoyed by other Australians. Our young people return from gaol to the very same conditions of daily existence that create the patterns of offending in the first place. The whirl of the revolving door is never far away.

Mick Dodson, *Fourth Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1996*



History

Marginalisation is a product of history. A dominant theme of the report of the Royal Commission into Aboriginal Deaths in Custody was the need to take into account the legacy of the past. Aboriginal people were colonised, totally subjugated to the control of invading Europeans. This process began in 1788 and, some would say, continues to this day. Over this period the Australian state has adopted a range of strategies to deal with Aboriginal people. These have included 'dispersal', the taking of land and scattering of land-holding groups; 'protection' where governments sought total social, economic and political control of the Indigenous population; and the more enlightened policies of the modern period which is nevertheless still marked by the widespread criminalisation of Aboriginal people.

As the Royal Commission report commented, this history also had its effects on non-Indigenous people: 'Every turn in the policy of government and practice of the non-Aboriginal community was postulated on the inferiority of Aboriginal people ... Non-Aboriginal Australia has developed on the racist assumption of an ingrained sense of superiority that it knows best what is good for Aboriginal people.'

Police were and still are agents of government policies and enforcers of the law. Earlier this century police were often involved in removing children. As a result of history, police, the justice system and prisons loom very large in the eyes of our people.



“Most Aboriginal people have problems with alcohol.”

The fact is, in comparison with non-Indigenous people, a large proportion of Aboriginal people and Torres Strait Islanders do not drink alcohol at all and in many of our communities alcohol consumption has been banned by the residents.

In the National Drug Strategy surveys of 1993 and 1994 it was found that there was a lower proportion of current regular drinkers in the Indigenous population (33 per cent) than in the general population (45 per cent). Over twice as many urban Indigenous people said they no longer drank alcohol than did their counterparts in the general population (22 per cent versus 9 per cent).

In the National Aboriginal and Torres Strait Islander Survey 1994 a large proportion of Indigenous people across Australia — 19 per cent of males and 34 per cent of females — reported that they had never drunk alcohol. This varied from about 9 per cent in Tasmania to 30 per cent in the Northern Territory for males and from about 15 per cent to over 60 per cent in the Northern Territory for females. Males (25 per cent) and females (48 per cent) in rural areas were most likely to say they had never drunk alcohol.

The large proportion of abstainers among the Indigenous population has also been observed in past surveys.

This is not to deny the obvious problems caused by the abuse of alcohol by many Indigenous people. Surveys also show that those Aboriginal people who drink are more likely to do so in excess. However, researchers have refuted the ‘fire water theory’ which maintains that Aboriginal people are biologically less able to handle alcohol.

Aboriginal organisations have identified alcohol as a major health problem which also undermines community cohesion. There are many effective substance-abuse programs operating within Indigenous communities around the country.

The stereotyping of Aboriginal people as problem drinkers is exacerbated by the often public nature of Aboriginal drinking. Many Aboriginal people either prefer, for cultural reasons, to drink outdoors or are forced to drink in public because of homelessness and/or the discriminatory attitudes of some licensees. This makes Aboriginal drinking and drinkers much more visible than their non-Indigenous counterparts.



Below are amounts spent in the 1997–98 financial year by Commonwealth agencies that have significant Indigenous programs. These figures have been rounded. Not included are smaller Indigenous-specific programs, mainstream programs accessed by Indigenous people or State/Territory programs.

It is important to note also that the figures do not represent amounts that Indigenous people have received **in addition** to other Australians. Many Indigenous programs substitute for mainstream programs.

ATSIC and Indigenous affairs portfolio

Economic Program

Commercial	\$41.3m
CDEP	\$374.1m
Program support	\$8.6m

Social and Cultural Program

Heritage, Environment and Culture	\$30.3m
Legal Aid and Human Services	\$56.8m
Home Ownership	\$37.8m*
Community Housing and Infrastructure	\$232.8m
Native Title and Land Rights	\$80.7m
Aboriginal Hostels Limited	\$28.3m
Program Support	\$1.6m

Corporate and Strategic Program

Corporate Support	\$113m
Regional and Community Planning	\$1.4m
Public Affairs	\$4.2m
Councils and Associations	\$3.4m
Evaluation and Audit	\$2.2m
Program Support	\$3.9m

Torres Strait Regional Authority

Indigenous Land Corporation

Other Commonwealth agencies (excluding running costs)

Department of Employment, Education, Training and Youth Affairs

(now Education, Training and Youth Affairs)

ABSTUDY	\$128m
Higher Education	\$21.7m
Aboriginal Education Direct Assistance	\$58.6m
Indigenous Education Supplementary Assistance	\$135m
Aboriginal Employment and Training Assistance	\$69m

Department of Health and Aged Care

Aboriginal Medical Services	\$105.7m
Substance Abuse	\$17.2m
Other	\$7.7m

Department of Family and Community Services

Aboriginal Rental Housing Program	\$91m
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*This figure is made up of receipts from home loan repayments.

History

There are many books and articles that can be consulted on Indigenous history and anthropology. Principal references here were works by Professor Henry Reynolds, *On the Other Side of the Frontier*, *Frontier*, *The Fate of a Free People and The Law of the Land*. Dr Rosalind Kidd has written *The Way We Civilise* (UQP, 1997) about Queensland Government administration. W.E.H. Stanner's 1968 Boyer Lectures were published as *After the Dreaming* (ABC Books, 1969). *Bringing Them Home*, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families was published by the Human Rights and Equal Opportunity Commission in 1997. The report of the Royal Commission into Aboriginal Deaths in Custody (1991) also had an historical emphasis.

Funding

There is no historical survey of the funding of Indigenous programs. Refer to the annual reports of successive Indigenous affairs agencies and those of other government departments with Indigenous-specific programs. Relevant reports of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs include *Mainly Urban* (1992) and *Access and Equity: Rhetoric or Reality* (1993). The five annual reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner (Human Rights and Equal Opportunity Commission, 1993–97) are also important documents. Other reports are referred to in the text.

ATSIC

See successive ATSIC annual reports. Ring the Office of Public Affairs, ATSIC, Canberra, for more information on the Commission, tel: 02-6289 3020.

Specific programs

Information was obtained from the relevant agencies: ATSIC, the Department of Health and Aged Care and the Department of Education, Training and Youth Affairs.

Statistics on deaths in custody and contact with the law have been published in two ATSIC reports published in 1996, *Keeping Aboriginal and Torres Strait Islander People Out of Custody* by Chris Cuneen and David McDonald and *Indigenous Deaths in Custody 1989–96*.

The report of the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations. Since 1992–93 ATSIC has co-ordinated five annual reports on the implementation of the Commonwealth response to the Royal Commission report. The final report was entitled *Five Years On* and published in December 1997. The annual reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner also comment on law and justice issues.

Land

There is also a great deal of documentation on Indigenous attachment to the land and systems of land tenure. Justice Woodward published two reports of the Aboriginal Land Rights Commission, in 1973 and 1974. Paul Seaman's report was *The Aboriginal Land Inquiry* (1984).

ATSIC and the National Indigenous Working Group have published much material on native title/Wik issues, including *The Plain English Guide to the Wik Decision*, *The Ten Point Plan on Wik and Native Title: Issues for Indigenous Peoples*, *Native Title Amendment Bill 1997: Issues for Indigenous Peoples*, and *Native Title, Mining and Mineral Exploration* by Dr Ian Manning. The National Indigenous Working Group's position on native title is contained in the document *Co-existence: Negotiation and Certainty* (April 1997).

references

The Aboriginal and Torres Strait Islander Social Justice Commissioner has also published annual Native Title Reports, available from the Human Rights and Equal Opportunity Commission.

ATSIC's proposals for the 'social justice package' in response to the *Mabo* decision are contained in *Recognition, Rights and Reform* (1995).

Community attitudes

The Council for Aboriginal Reconciliation's research *Unfinished Business* was published in 1996. See above for further references on law and justice issues.

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