

**ADDRESS BY THE HONOURABLE
SIR WILLIAM DEAN
ON THE OCCASION OF THE OPENING OF THE
NATIONAL CONFERENCE**

UNDERSTANDING AND IMPLEMENTING GOOD GOVERNANCE FOR
INDIGENOUS COMMUNITIES AND REGIONS

**Indigenous Governance Conference
3-5 April 2002
Canberra**

I acknowledge the traditional custodians – the Ngunnawal people and the Kamberri group - upon whose ancestral land we are privileged to gather.

At the outset, there are two things I wish to do.

The first is to explain my appearance. From the nose up, I am largely held together by stitches after some successful skin cancer surgery. I was assured by the Conference organisers that they preferred that I appeared rather than that I stayed either at home or out of sight behind a screen. Indeed Helen even went so far as to suggest that I should be lit in vivid technicolour since my appearance would serve as a reminder that we non-indigenous Australians should not assume that we are privileged to share with our indigenous fellow Australians their natural affinity with our environment.

The second thing is to say welcome to the extraordinarily distinguished group of visitors from overseas who have generously come to share their knowledge and expertise in relation to indigenous governance. To each of them I say: Thank you. Your visit will be of invaluable benefit to us. I hope that it will be an extraordinarily rewarding and happy one for you.

I also note the presence of so many of the leaders of indigenous Australia and of the countless non-indigenous Australians who are walking together on our shared pilgrimage towards true justice and reconciliation. Occasions such as this provide an opportunity for us to renew our determination that, however difficult the way ahead may be, we will together reach its end.

This Conference has been convened by Reconciliation Australia, the National Institute for Governance at the University of Canberra and the Aboriginal and Torres Strait Islander Commission. I congratulate those organisations and their leaders. I also warmly congratulate all the other organisations supporting the Conference and all those individuals who have worked so hard and effectively to bring it to the stage where it is now commencing.

The subject of the Conference - *Understanding and Implementing Good Governance for Indigenous Communities and Regions* - is obviously of great importance to all indigenous Australians. But it is also of immeasurable importance to all Australians, non-indigenous and indigenous, as we stand, unreconciled and diminished, on the threshold of our second century as a nation. In that context, it is appropriate that, in opening a Conference concerned with the future, I make some brief reference to the past.

As the Conference progresses, you will, I hope, be told of current efforts of both Governments and private institutions and individuals in this country to encourage and support responsible and effective governance in our indigenous communities and regions. But I venture the thought that you will inevitably be conscious of a constant backdrop of past governmental failure and even indifference in the face of the terrible problems of disadvantage in indigenous communities across the whole spectrum of spiritual and material existence, including governance. That failure was, in truth, a reflection of wider failure and entrenched indifference at a national level.

It was only fifteen months ago, on the 1st January of last year, that we Australians celebrated the Centenary of the Federation which brought our nation into being. The foundation of the governance of that nation was our Commonwealth Constitution. In so far as non-indigenous

Australians were concerned, that Constitution enshrined a national system of representative democracy reflecting overseas genius and experience. In so far as indigenous Australians were concerned, it not only ignored their governance. It all but ignored their very existence¹.

As adopted, the Constitution contained but two dismissive references to the Aboriginal peoples. The more significant of them, s.127, actually provided that “[i]n reckoning the numbers of the people of the Commonwealth or of a State or other part of the Commonwealth, Aboriginal natives shall not be counted”. That exclusion of Aborigines from the numbers of the people of Australia applied to provisions dealing with parliamentary representation and financial responsibilities and entitlements. In time, it came increasingly - and justly - to be seen not only as a constitutional exclusion of Australia’s indigenous peoples from participation in the processes of national governance but also as a declaration of their essential worthlessness and irrelevance. Its discriminatory, indeed racist, injustice remained constitutionally entrenched until 1967, that is to say, for two thirds of the first century which we celebrated only last year. It exacerbated an even more significant discriminatory injustice which was equally destructive of indigenous governance and which remained entrenched for more than nine tenths of that century as the basis of our nation’s land law, namely, the doctrine of *terra nullius*.

In essence, that doctrine asserted that, for legal purposes, the territory of the Australian Colonies had been, at the time of European settlement, unoccupied or uninhabited with the consequence that full beneficial ownership of all the lands of the Colonies vested in the Crown, unaffected by any claims of the Aboriginal inhabitants. It was that doctrine, as unjustifiable in law as it was mistaken in fact, that provided the basis of the dispossession, so often by force and killing, which underlay the devastation and degradation of the Aboriginal peoples of our continent. It also had the effect of undermining and destroying the traditional basis of indigenous governance in this country as it had developed during the fifty, sixty or more millennia which preceded the less than two and a quarter centuries of European settlement. For the basis of that system of indigenous governance was the land and the unique relationship between it and its peoples.

The exclusion of indigenous Australians from the governance of themselves and the nation did not end with the Constitution and *terra nullius*. It was reinforced by the national Parliament². In 1902, the first Commonwealth Franchise Bill was introduced into the Parliament. As introduced, it would have conferred the right to vote on indigenous Australians. As enacted³, and subject to what was in the event an insignificant qualification⁴, it disqualified any “Aboriginal native of Australia Asia Africa or the Islands of the Pacific except New Zealand” from having “his name placed on the Electoral Roll”. Subject to limited exceptions, the specific exclusion of any “Aboriginal native of Australia” from the Commonwealth franchise extended into the second half century of our nation’s history.

¹ In the following paragraphs I have drawn upon parts of the Year 2001 Sydney Peace Prize Lecture given by me in Sydney on 8 November 2001.

² See, generally, John Summers, “The Parliament of the Commonwealth of Australia and Indigenous Peoples”, Commonwealth Parliamentary Library Research Paper 10 2000-01, 31 October 2000. I acknowledge my indebtedness to Mr. Summers’ valuable paper in relation to some of the contents of this and the next paragraph.

³ Act no. 8 of 1902.

⁴ The effect of s.41 of the Constitution. See, as to the limited effect of the section, *The Queen v Pearson* (1983) 152 C.L.R. 254.

One could go on for hours simply listing examples of the exclusion of Australia's indigenous peoples from the processes and benefits of governance while being, at the same time, subjected to discriminatory injustice. The exclusion for many years of "Aboriginal natives of Australia" from Commonwealth social welfare rights and benefits.⁵ The requirement in the early Posts and Telegraphs legislation that "white labour" only be employed by contractors⁶. The various Northern Territory Ordinances, made with the authority of the National Parliament, which enabled thousands of Aborigines at a time to be declared "wards" without prior notice or consideration of personal circumstances⁷ and which restricted Aboriginal freedom of movement; freedom of choice of work; freedom of marriage; and, in the case of those who worked and lived in towns, freedom even to be "at large" after sunset. The subjection, again by Ordinance or Regulation made under the authority of the Parliament, of Northern Territory Aborigines and their lives to a degree of discretionary control that made possible the desolation wrought in the Territory by the removal of children.

Truth and ordinary decency require that we Australians acknowledge that these discriminatory injustices were not inflicted by individuals for whose acts we might deny responsibility. They were inflicted by the nation of which we are all part. It is well and truly time – indeed it is long overdue – that that nation unambiguously and formally acknowledges that basic truth. Perhaps even more important for the purposes of this Conference, it is well and truly time that our nation recognises that it has a duty in justice and decency to do whatever is necessary to help overcome the devastating and appalling problems, both material and spiritual, of our indigenous peoples which are the present consequences of past dispossession, injustice and introduced disease.

Those problems of disadvantage reach across the whole of indigenous Australia. They are, however, particularly acute in the indigenous communities. Health – an indigenous baby born today will, on average and unless things change, live almost twenty years less than a non-indigenous one. And a recent study by the Commonwealth Grants Commission discloses that the gap is still actually widening. Education – an indigenous teenager finishing school in a Northern Territory indigenous community is most unlikely to have reached anything like the levels of numeracy or literacy necessary for effective functioning, let alone employment, in mainstream Australia. Employment itself – there is simply no realistic prospect for employment for most young people growing up in an indigenous community. Then, of course, there are the social problems – welfare dependency, alcohol, domestic violence ... to name but some. And the problems of the spirit, especially among the young - loss of self respect and esteem, of hope, too often of life.

The solutions to these problems? They are, of course, formidably difficult to identify and overwhelmingly difficult to implement. But they **must** be identified and they **must** be implemented. For my part, I am prepared to be dogmatic about only three things. The first is that the initiative, the inspiration, the solutions and the ownership must be essentially indigenous ... backed by national recognition and support. The second is that education and

⁵ See, generally, Summers, *op. cit.*

⁶ Posts and Telegraphs Act 1901, s. 16(1).

⁷ See, e.g., *Namatjira v Raabe* (1959) 100 C.L.R. 664

effective and responsible indigenous governance are the key. The third is that, in the context of the past, our nation as a whole has a duty in justice and decency to ensure that every thing necessary is done to help our indigenous fellow Australians develop and enjoy the effective and adequately resourced governance and educational systems in their communities which can enable and empower them to address and resolve the terrible problems which oppress their peoples.

So it is that I repeat what I said at the beginning of these comments. The subject of this Conference is of critical and immeasurable importance to all Australians. You have my warmest support and good wishes in all your deliberations.

And now it is my great privilege to declare this Conference - Understanding and Implementing Good Governance for Indigenous Communities and Regions – to be officially open.