

Recognition Rights and Reform

A Report to Government on Native Title Social Justice Measures

ATSIC

The Hon Paul Keating MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

On 14 January 1994, the Acting Prime Minister wrote to me seeking the formal views of the Commission on further measures that the Government should consider to address the dispossession of Aboriginal and Torres Strait Islander people as part of its response to the 1992 High Court decision on native title.

In asking for a formal report from the Commission, the Acting Prime Minister indicated the Government's expectation that the Commission would consult with wider Indigenous community interests including other Aboriginal and Torres Strait Islander organisations.

The Commission appointed an Advisory Committee under s 13 of the ATSIC Act to oversee development of its report and the consultation process. The Native Title Social Justice Advisory Committee was chaired by the Deputy Chairperson of ATSIC, Commissioner Charles Perkins, with membership comprising both Commissioners and community representatives

An extensive consultation process, sponsored jointly with the Council for Aboriginal Reconciliation, was undertaken in the second half of last year with indigenous community representatives in each of ATSIC's 17 zones. The outcomes of those consultations have underpinned development of the report. The report was endorsed by the Commission at its thirty-third meeting held in Canberra on 6-9 February 1995.

1 present *Recognition, Rights and Reform: a Report to Government on Native Title Social Justice Measures*.

Yours sincerely

Lois O'Donoghue, CBE AM
Chairperson

PREFACE

This report is about recognition, rights and reform.

It is about recognition of the unique place of Aboriginal and Torres Strait Islander people in Australian history and society today. It is about the rights of Australia's indigenous

peoples. It is about the further reforms necessary to secure and underpin those rights and to ensure they can be exercised and enjoyed by Aboriginal and Torres Strait Islander peoples.

There is an expectation that this report constitutes a convenient social justice 'package' that can be measured in dollar terms and acted upon accordingly.

Certainly our report identifies a range of outstanding needs which must be met to ensure social justice for indigenous Australians, pre-eminent of which is the improvement of Aboriginal and Torres Strait Islander living conditions. Indigenous people have normal entitlements to meeting those needs and they should therefore be met from existing mainstream and special programs, appropriately and adequately resourced.

But that is NOT what the report is solely about.

The disadvantaged and unequal position in which Australia's indigenous people find themselves has been comprehensively documented by the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission's report remains an historic document. We do not attempt to cover the same ground.

Our focus is on institutional, structural, Collaborative, cooperative reform. It is about a fundamental shift from welfare to basic rights, from dependence to autonomy, from government assistance to power. Central to the social justice agenda is self determination.

Because of the depth and scope of relations between indigenous people and Government, and the reliance of indigenous people on Government assistance, fundamental and lasting change in the basis of the relationship with Government will only be achieved if Government at all levels are prepared to make a genuine commitment to securing such a change.

We believe that the best way to achieve this is for all Governments to work to a set of common principles entrenched in legislation. These principles would give new definition to the power relationships between indigenous peoples and Government and provide a starting point for Government action to commence before the end of 1995 with a view to achieving full social justice by the year 2001.

In this report, we propose draft principles of indigenous social justice to guide all future relationships between the Commonwealth and indigenous peoples and be capable of applying to the roles and responsibilities of other spheres of government.

Acceptance of these principles would guide the major structural changes recommended in this report, including constitutional recognition, regional autonomy, the negotiation of a Treaty or comparable document, compensation, improved service delivery, recognition of the social and cultural diversity of Aboriginal and Torres Strait Islander peoples, protection of rights, and opportunities for economic development.

These measures should be supported by a rigorous process of reporting and accountability to Aboriginal and Torres Strait Islander peoples.

There is urgency to this reform as Australia prepares to celebrate the centenary of Federation.

Aboriginal and Torres Strait Islander people will be looking for significant and lasting change. In this report we have put down our agenda and seek a staged, measured and continuing process of reform within this negotiating framework.

Ultimately the report is about improving the relationship between Aboriginal and Torres Strait Islander peoples and the wider Australian community-and in particular between governments and indigenous peoples. It must be recognised there is a strong and inescapable link between social justice for Aboriginal and Torres Strait Islander peoples and the goal of reconciliation between indigenous and non-indigenous Australians.

Hopefully that goal will be achieved by the time the Council for Aboriginal Reconciliation comes to the end of its term in the year 2000.

The consultations which have led to this report were undertaken as part of the Commonwealth Government's three policy responses to the High Court's decision in *Mabo v Queensland (No 2)* that a form of native title exists under the common law.

The first saw the Commonwealth Parliament pass the *Native Title Act 1993* offering the protection of statute law to native title and arrangements for future dealings in native title land.

Subsequently, the Government introduced legislation to establish a National Aboriginal and Torres Strait Islander Land Fund and an Indigenous Land Corporation to acquire and manage land for dispossessed indigenous groups.

At the same time the Government committed itself to further social justice measures for Aboriginal and Torres Strait Islander people, the subject of this report.

These have been significant achievements. Recognition of the continued existence of native title, in particular, has opened the way to broader appreciation and acceptance of the rights of indigenous Australians. It has led to a new recognition of the status of Aboriginal and Torres Strait Islander people. Inevitably indigenous peoples have derived new hope from the High Court's decision.

This report widens the horizons of understanding of the situation and aspirations of Australia's indigenous people.

In preparing the report, the advisory committee established by the Aboriginal and Torres Strait Islander Commission consulted widely with the indigenous community.

In a very real sense, the report goes beyond that specific consultation. It is the culmination of years of consultation and discussions among indigenous people on a range of issues and grievances.

Taken with other Government initiatives, the response to this report has the potential to resolve many of the outstanding problems which impact on the lives of Australia's indigenous people. But it must be a fair and equitable resolution.

Fundamental grievances will not vanish. In the European settlement of Australia, there were no treaties, no formal settlements, no compacts. Aboriginal and Torres Strait Islander people therefore did not cede sovereignty to our land. It was taken away from us. That will remain a continuing source of dispute.

Governments at all levels cannot afford to let pass the very real opportunity that now presents itself for reform based on a fundamental change in the relationship with Australia's indigenous people.

Social justice is a matter for all Australians. It is our hope that the recommendations in the report will be carefully considered in a bipartisan way by all political parties and understood and accepted by the wider Australian public.

Our report comes at a time when the political, social and legal landscape has changed following the High Court's decision on native title.

The continuing disadvantage of Aboriginal and Torres Strait Islander people is a manifestation of the impact of over two centuries of dispossession, dispersal and discrimination, involving the denial of fundamental rights.

Reversing that situation requires a determined national commitment. This report alone will not achieve what indigenous people seek. But it provides a framework for moving forward and building new directions for the future.

Such is the nature of the recommendations in this report, that Government will need time to respond to it.

This is not an invitation to sweep it under the carpet. It is a request to ensure it is properly considered and responded to in a timely and responsible manner.

The report represents a negotiating platform. Many of the issues it raises will require further examination. There needs to be further consultation with Aboriginal and Torres Strait Islander communities. We ask the Government to establish a proper process to ensure the report is given its rightful consideration.

Now is a time for action-to narrow the gap between aspiration and reality, between good intent and outcome.

Charles Perkins, Chairperson
Native Title Social Justice Advisory Committee

Members

Commissioner Luke Maynard, Deputy Chairperson
Commissioner Kumantjay Ross
Commissioner Joseph Elu
Ms Marjorie Thorpe, Lake Tyers Aboriginal Trust
Ms Linda Burney, Aboriginal Education Consultative Group Inc.
Mr Rob Riley, WA Aboriginal Legal Service

INTRODUCTION

In requesting a report from ATSIC on social justice, the Government specifically asked the Commission to consult with the indigenous community and particularly Aboriginal and Torres Strait Islander community organisations. The process adopted for development of the report provided for a wide range of indigenous community views to be considered and represented. Consultation and broad participation by the Aboriginal and Torres Strait Islander community underpins this report.

1.2 The Commission appointed an Advisory Committee to oversee development of the Report and the consultation process. The Committee was chaired by Deputy Chairperson Charles Perkins and comprised membership drawn both from other Commissioners and from wider community interests.

1.3 The extensive consultation process was undertaken with the Council for Aboriginal Reconciliation, which is reporting separately to the Government on possible further social justice measures. Consultations involved community meetings, written submissions, and direct presentations by Aboriginal and Torres Strait Islander organisations. A record of the consultations is published in association with this report.

INDIGENOUS AUSTRALIANS AND SOCIAL JUSTICE

1.4 A central objective of the Commonwealth's Social Justice Strategy is the development of a fairer, more prosperous and just society for all Australians. It is aimed at expanding choices and opportunities so all can participate as citizens in Australia's economic, social and political life and be better able to determine the direction of their own lives.

1.5 The Strategy has particular relevance to indigenous Australians because of:

- the Commonwealth's acceptance, since the 1967 Referendum, of a special responsibility for the Aboriginal and Torres Strait Islander peoples;
- the relevance of international developments, including increasing recognition of the unique status of indigenous peoples and of Australia's obligations under international human rights instruments; and
- the fact that, by any objective measure, Aboriginal and Torres Strait Islander peoples remain the most disadvantaged group within Australian society, still unable to exercise and enjoy basic rights that other Australians take for granted.

1.6 That disadvantage has been extensively documented and conclusively demonstrated in many reports, of which the most notable and comprehensive was that of the 1991 Report of the Royal Commission into Aboriginal Deaths in Custody. An analysis of the most recent Census and other statistical indicators reveals the following key features:

- the indigenous unemployment rate was 2.8 times the national average at the time of the 1991 Census and would have been much higher without the impact of the Community Development Employment Projects (CDEP) Scheme on official statistics;
- long-term unemployment and under-employment remain very much higher than for other Australians (60 per cent of indigenous unemployment is long-term compared to 45 per cent in the wider community);
- much of the growth in Aboriginal and Torres Strait Islander employment has been due to the expansion of the Community Development Employment Projects (CDEP) Scheme, which is based on voluntarily substituting part-time and low skill employment for unemployment entitlements;
- average indigenous incomes have not improved, remaining at around only three-fifths of the average for other Australians;
- Aboriginal and Torres Strait Islander involvement in education beyond compulsory schooling years, while increasing, is still far below national levels;

- health remains a major area of concern, with most of the available indicators—life expectancy up to twenty years below national figures, high incidence of diseases and rates of hospitalisation, and so on—showing little sign of significant improvement relative to the overall population;
- unfilled demand for housing and community amenities and services of even the most modest standards remains unacceptably high;
- nearly 1 in 4 indigenous households with dependants are headed by one adult (of whom 86 per cent are women) compared with 1 in 12 for non-indigenous Australians;
- 27 per cent of indigenous households live in after-housing poverty compared to 12 per cent of the wider community;
- aged indigenous people face particular problems in accessing appropriate services; and
- Aboriginals and Torres Strait Islanders continue to be grossly over-represented among incarcerated Australians with no significant decline in the rate of deaths in custody.

1.7 Such indicators of disadvantage are manifestations of the impact of two centuries of dispossession, dispersal and discrimination, involving the denial of fundamental rights.

1.8 Before British occupation, Aboriginal and Torres Strait Islander peoples had developed a mosaic of communities and groups with rich and enduring cultures centred on an intimate relationship with the land and sea. Since then, life has become a matter of enduring a hostile and destructive social and political environment. The unrelenting processes of dispossession and dispersal have destroyed much of the fabric of Aboriginal and Torres Strait Islander societies. Today, many indigenous communities and individuals have little or no stake in the economic life of the nation other than what Governments may provide.

1.9 The achievement of social justice for indigenous Australians requires that this human tragedy and national shame be redressed. It is clearly a task of such magnitude and high importance as to lie well beyond the scope of any particular set of measures of public policy. Indeed, it requires no less than fundamental reform to the basis of the relationships between Governments and Aboriginal and Torres Strait Islander peoples, built on recognition of:

- rights to equality of treatment with all other Australians;
- the particular status of a nation's indigenous peoples;
- rights to cultural, social and economic diversity;
- the right to self-determination of the priorities and paths in life;
- the importance of addressing both immediate need and the achievement of lasting solutions; and
- the need to commit adequate resources.

1.10 Some progress is already being made. There has been significant expansion (primarily by the Commonwealth) in the range and size of Government programs aimed

at overcoming Aboriginal and Torres Strait Islander disadvantage. The establishment and development of ATSIC and the Regional Councils have been major achievements towards indigenous empowerment and self-determination. Recognition of the continued existence of native title -though likely to be of direct benefit to only a small proportion of Aboriginal and Torres Strait Islander people-has lit the way to broader appreciation and acceptance of the rights of indigenous Australians.

1.11 Despite the batterings of the last two centuries, Aboriginal and Torres Strait Islander cultures have endured and continue to grow in strength and resilience. The vigour of indigenous art in all its forms is based in the pride of Aboriginal and Torres Strait Islander peoples in their cultural heritage and traditions. While many indigenous languages have been lost or are under threat, there is increasing recognition of the importance of language in the preservation of cultural strength and diversity, and the proportion of Aboriginal and Torres Strait Islander people who speak an indigenous language at home in fact increased between the 1986 and 1991 Censuses.

1.12 Nonetheless, the evidence of continuing shortcomings in the actions of Governments is stark and pervasive. It is experienced in the daily lives of indigenous people -in sub-standard housing, in essential services that are poor or non-existent, in low educational participation and poor outcomes, in bad health and premature death, in the absence of opportunity and the loss of hope and spirit. It is documented exhaustively in the report of the Royal Commission into Aboriginal Deaths in Custody.

1.13 The report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs into the implementation of the Commonwealth's Access and Equity Strategy, appropriately titled "Rhetoric or Reality", shows how far mainstream Commonwealth service providers have to go in ensuring that their programs meet indigenous needs. As to State, Territory and Local Governments, there is a wealth of evidence that demonstrates how they are failing to meet their responsibilities to their Aboriginal and Torres Strait Islander citizens.

1.14 Some idea of the enormous extent of unmet need can be obtained from ATSIC's survey of housing and community infrastructure needs. The first stage of the survey was completed in 1992 and found that, in discrete communities and other rural and remote areas:

- around 44,000 Aboriginal and Torres Strait Islander persons live in such overcrowded conditions that they require additional housing;
- about 40 per cent of the houses required major repair or replacement; and
- of the discrete communities, one third had a water supply which did not meet national standards for human consumption; 13 per cent did not have a regular water supply, and around two-thirds had less than 50 per cent of internal or access roads sealed.

1.15 Notwithstanding relatively minor progress in some respects, Aboriginal and Torres Strait Islander peoples remain grossly disadvantaged compared with other Australians. Report after report has confirmed this. Still an enormous backlog of unmet need remains, and future growth in the indigenous population-projected to be at considerably higher levels than for the non-indigenous population -adds each year to the size of the task.

1.16 Major reform and a sustained effort are needed to ensure that the disparities in living standards between Aboriginal and Torres Strait Islander peoples and the wider community are eliminated, and that indigenous people can come at last to enjoy the same standard of services as other Australians.

ASPIRATIONS AND COMMITMENTS

1.17 It is twenty-seven years since the Commonwealth was given authority by the Australian people, in a historic referendum, to involve itself in indigenous affairs. During this time, Aboriginal and Torres Strait Islander people have repeatedly expressed aspirations for social justice and indicated what needs to be done. Three examples will serve as reminders of the many. In 1979, the former National Aboriginal Conference developed and publicised a set of proposals for addressing the needs and desires of indigenous people. In the Bicentennial year, a meeting at Barunga of indigenous people from around Australia drew up a charter which was presented to the then Prime Minister. More recently, national meetings at Eva Valley (NT) and Boomanulla (ACT) developed statements setting out the aspirations of indigenous people in the context of the High Court's recognition of native title.

1.18 While the content of these and other statements may have varied significantly in detail, there have been common underlying themes:

- self-determination, and the ability and resources to develop Aboriginal and Torres Strait Islander communities on the basis of indigenous knowledge and aspirations;
- full equality of treatment for indigenous peoples;
- recognition of their status as the indigenous peoples and original owners of the land;
- recognition and protection of indigenous cultures;
- compensation for dispossession;
- equitable access to Government programs;
- adequate resources to overcome disadvantage; and
- recognition of indigenous sovereignty.

1.19 There has been no lack of expression of good intent from Governments, though significant results have often been lacking. For example, there was the promise, unfulfilled in the event, of national land rights. The commitment to identify the problems identified in the report of the Royal Commission into Aboriginal Deaths in Custody has yet to be translated into real improvement. Indigenous peoples are hoping that the response to the High Court's decision on native title will not turn out to be a further case of unrealised expectations.

1.20 It is now time to narrow the gap between aspiration and reality, between good intent and outcome. As the Prime Minister, the Hon Paul Keating, said in his speech at Redfern in December 1992 to mark the opening of the International Year of the World's Indigenous People:

"Isn't it reasonable to say that if we can build a prosperous and remarkably harmonious multicultural society in Australia, surely we can find just solutions to the problems which beset the first Australians—the people to whom the most injustice has been done."

PRINCIPLES AND PRACTICALITIES

1.21 Fundamental and lasting change in the basis of the relationships between Governments and Aboriginal and Torres Strait Islander peoples will only be achieved if Governments -State, Territory and local as well as Commonwealth-are prepared to make a genuine commitment to securing such a change, and to work to a set of common principles.

1.22 This is hardly a radical notion. In fact such commitments are given in the *National Commitment to Improved Outcomes in Program and Service Delivery for Aboriginal Peoples and Torres Strait Islanders*, endorsed by the Council of Australian Governments in 1992, which includes the following:

"The Governments of Australia, in making this National Commitment, have as guiding principles:

- 4.1. empowerment, self-determination and self-management by Aboriginal peoples and Torres Strait Islanders;*
- 4.2. economic independence and equity being achieved in a manner consistent with Aboriginal and Torres Strait Islander social and cultural values;*
- 4.3. the need to negotiate with and maximise participation by Aboriginal peoples and Torres Strait Islanders through their representative bodies, including the Aboriginal and Torres Strait Islander Commission, Regional Councils, State and Territory advisory bodies and community-based organisations in the formulation of policies and programs that affect them;*
- 4.4. effective coordination in the formulation of policies, and the planning, management and provision of services to Aboriginal peoples and Torres Strait Islanders by Governments to achieve more effective and efficient delivery of services, remove unnecessary duplication and allow better application of available funds; and*
- 4.5. increased clarity with respect to the roles and responsibilities of the various spheres of Government through greater demarcation of policy, operational and financial responsibilities."*

1.23 Unexceptionable words, surely: and more the pity that, to date, so little has happened to put them into effect.

1.24 To help in ensuring that the aspirations and needs of Aboriginal and Torres Strait Islander people are met, and in particular the ability to exercise and enjoy basic rights, a broader set of Principles for Indigenous Social Justice is required that would redefine the power relationships between indigenous peoples and Government. Their adoption would underpin the further development and implementation of the specific proposals put forward in this report, guide all future relationships between the Commonwealth and indigenous peoples, and be capable of applying to the roles and responsibilities of other spheres of Government as well.

1.25 This proposal for the adoption of a broad set of principles has similarities with the situation in the United States, where on 29 April 1994 President Clinton issued a

Memorandum for the Heads of Executive Departments and Agencies containing guidelines for relationships with Native American tribal Governments.

THE DRAFT PRINCIPLES

1.26 The following draft principles are intended for adoption by the Government as the foundation for its relations with indigenous people. They should be promulgated throughout the Commonwealth Government sector, and the Commonwealth should negotiate their similar adoption by State, Territory and local Governments. As soon as practicable they should be given the force of law, and their implementation should be monitored by an independent body such as the Auditor-General and by ATSIC on behalf of Aboriginal and Torres Strait Islander peoples.

1.27 The adoption of these principles is intended to:

- a. provide a starting point for Government action to commence before the end of 1995 with a view to achieving social justice by the year 2001; and
- b. provide the basis for continued evolution and development of relationships between the Commonwealth Government and Aboriginal and Torres Strait Islander peoples, particularly at the local community and regional levels.

1.28 The development of these new relationships will help forge greater cohesion amongst Aboriginal and Torres Strait Islander peoples and organisations at the local, regional and national level. ATSIC will seek to facilitate this development.

PRINCIPLES FOR INDIGENOUS SOCIAL JUSTICE AND THE, DEVELOPMENT OF RELATIONS BETWEEN THE COMMONWEALTH GOVERNMENT AND ABORIGINAL AND TORRES STRAIT ISLANDER, PEOPLES

1. The relationship between the Commonwealth Government and the Aboriginal and Torres Strait Islander peoples of Australia is founded in full acceptance and recognition of the fundamental rights of Aboriginal and Torres Strait Islander peoples to:

- a. recognition of indigenous peoples as the original owners of this land, and of the particular rights that are associated with that status;
- b. the enjoyment of, and protection for, the unique, rich and diverse indigenous cultures;
- c. self-determination to decide within the broad context of Australian society the priorities and the directions of their own lives, and to freely determine their own affairs;
- d. social justice and full equality of treatment, free from racism; and
- e. exercise and enjoy the full benefits and protection of international covenants.

2. In the formulation of policies and delivery of programs that affect Aboriginal and Torres Strait Islander peoples, the Commonwealth, pursuant to powers in relation to indigenous peoples overwhelmingly granted it by the people of Australia in the 1967 Referendum:

- a. shall ensure that policies, the delivery of programs and services, and the effective improvement of service quality is achieved through processes *which are negotiated with and* which protect the rights of indigenous peoples;
- b. recognises the diversity of the Aboriginal and Torres Strait Islander peoples,
- c. accepts the importance of empowerment for decisionmaking and planning at the community and regional levels, and the need for Government at all levels to cooperate and negotiate with Aboriginal and Torres Strait Islander communities and organisations;
- d. requires that indigenous peoples have full access to, and equitable outcomes from participation in, all relevant mainstream programs,
- e. shall ensure processes of accountability to Aboriginal and Torres Strait Islander peoples and especially shall ensure their involvement in review and evaluation processes;
- f. requires that collaboration and coordination between Government agencies providing services to Aboriginal and Torres Strait Islander people shall be significantly improved;
- g. shall establish a genuine and productive partnership with indigenous peoples through representative bodies at local, regional, State and national levels;
- h. shall provide quantifiable data and other forms of information on the objectives and outcomes achieved, for all programs which impact on Aboriginal and Torres Strait Islander well-being; and
- i. shall ensure that the interests of indigenous peoples transcend existing conventions about the division and compartmentalisation of the functions of the various spheres of Government

3. The Commonwealth shall ensure that these principles are also adopted by State, Territory and local Governments throughout Australia, if necessary by Commonwealth legislation applying to all Governments.

4. These Principles shall be observed by all Commonwealth departments and agencies as governing all aspects of their relationships with indigenous peoples. Departmental secretaries and agency heads will be directly responsible for the implementation of the Principles, and for reporting annually on progress.

5. The need to achieve an agreed and durable settlement of issues between indigenous and other Australians is recognised as a paramount national objective.

PRORITIES FOR REFORM

1.29 The proposals for further social justice measures in this report seek to bring together the aspirations of Aboriginal and Torres Strait Islander peoples for long term and lasting reform with the need for more immediate change to current policy and practice. The recommendations in summary encompass proposals for:

- major institutional and structural change, including Constitutional reform and recognition, regional self-Government and regional agreements, and the negotiation of a Treaty or comparable document which must address the issue of compensation;
- overcoming inequities and inefficiencies in service delivery, including the achievement of genuine access and equity in Commonwealth, State/Territory and Local Government mainstream programs and revised Commonwealth-State funding arrangements;
- full recognition of the social and cultural diversity of Aboriginal and Torres Strait Islander peoples, and the attendant need for policies and programs to have the flexibility to enable them to be tailored to address more effectively the varying local circumstances and priorities of indigenous communities and groups;
- protection of rights through such means as recognition of customary laws, protection of intellectual and cultural property, and recognition of what may be termed indigenous rights, possibly through a Bill of Rights or other enforceable means; and
- practical measures to enhance opportunities for economic development and to achieve other desirable objectives such as improved public awareness of indigenous cultures and indigenous issues.

1.30 In some cases it has been possible to make proposals for action that could be completed in a comparatively short time-frame. In large measure, however, acceptance in principle of the proposals would need to be followed by a more intensive period of development. Achievement of some goals, such as constitutional recognition, may take a number of years.

1.31 It will be vital that firm timetables are made, and that mechanisms are established with the power to ensure that action does not flag or reform become watered down. Indigenous people have been too often betrayed, over the last two centuries, by fine words that have soon withered in the grim drought of inaction and indifference.

1.32 The Australian nation is reaching a defining period in its history. As we approach and begin a new Millennium, Australia will observe the centenary of its federation and address the basis of its nationhood. This is an appropriate time to be reaching for a durable settlement with its indigenous peoples. These developments, together with the hosting of an historic Olympics, will place Australia in the spotlight of world attention. If it is seen that national events are not inclusive of all Australians, if the special place of indigenous peoples remains unrecognised and if there are still major obstacles to the exercise of the rights and entitlements that all Australians should be able to enjoy, the nation will be judged accordingly, and harshly.

1.33 As an overall objective, the Government should make a commitment to effective implementation of all the elements of the package by 2001. This is not to suggest that indigenous people set any particular significance on the centenary of Federation. It offers a political opportunity, already acknowledged by Government. There is a strong and inescapable link between progress towards social justice for Aboriginal and Torres Strait

Islander peoples and the goal of reconciliation between indigenous and non-indigenous Australians. The second is unattainable without the first.

1.34 Recent Government reforms in indigenous affairs have focussed largely on organisational structure and on programs specifically for Aboriginal and Torres Strait Islander peoples. Despite the findings of reports such as the Royal Commission into Aboriginal Deaths in Custody *and Rhetoric or Reality*, mainstream programs continue to fall short in addressing the unique aspirations and needs of indigenous peoples, especially at a community level. Determined leadership is required to **improve** the quality of all services provided to Aboriginal and Torres Strait Islander peoples.

RECOMMENDATION 1.

The Commonwealth Government should adopt the Principles for Indigenous Social Justice as the foundation for its relations with Aboriginal and Torres Strait Islander peoples. They should be promulgated throughout the Commonwealth Government sector, and the Commonwealth Government should ensure, if necessary by legislation, that they are also adopted by State, Territory and local Governments.

RECOMMENDATION 2.

Departments and agencies In all spheres of Governments must be obligated to Implement the Principles and to report their performance annually. The Commonwealth Government should enshrine the Principles In legislation and should ensure appropriate monitoring procedures are adopted.

RECOMMENDATION 3.

Performance Agreements for Departmental Secretaries and Heads of Statutory Authorities should Include specific objectives which address the performance of departments and agencies In developing and Improving services and support to Aboriginal and Torres Strait Islander peoples as clients and as employees, based on the Social Justice Principles.

RECOMMENDATION 4.

The Commonwealth Government must make a commitment to effective implementation of all the elements of the "package" by 2001 and regularly Inform both the indigenous and wider community of progress. Accordingly the Commonwealth should ensure that departments and agencies In all spheres of Government, are required to:

- a. report annually on outcomes achieved for Aboriginal and Torres Strait Islander peoples in both mainstream and Aboriginal and Torres Strait Islander specific programs; and
- b. identify intended outcomes for Aboriginal and Torres Strait Islander peoples of any now programs or amended programs.

RECOMMENDATION 5.

The Parliament must be involved in supervisory mechanisms to ensure the recommendations are implemented.

LINKAGES WITH OTHER DEVELOPMENTS

2.1 The call for proposals for further social justice measures comes in a context of substantial reassessment and review of public strategies, policies and programs in indigenous affairs.

2.2 In addition to the changes being wrought as a result of the recognition of native title -including, of course, the development of these social justice measures-there are six key areas of activity:

- a. the Government's Access and Equity Strategy, particularly as it relates to indigenous peoples, has come under intense scrutiny following a Parliamentary review and an evaluation of the Strategy;
- b. the action taken to implement the Government's response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody is the subject of annual reports, which in turn are scrutinised by the Parliament and by the Social Justice Commissioner,
- c. major reviews have been completed of policies and programs in the key areas of Aboriginal and Torres Strait Islander employment, education and health;
- d. the Council for Aboriginal Reconciliation, which ceases to exist at the end the year 2000, has reported to Government on the future path for the reconciliation processes (and is also reporting separately on further social justice measures).
- e. the approaching Centenary of Federation is bringing with it a renewed focus on the place of indigenous peoples in modern Australian society, and
- f. the International Decade of the World's Indigenous People is commencing with a focus on the international recognition of indigenous rights.

2.3 It is important to take account of these developments in assessing what further social justice measures are needed.

ACCESS AND EQUITY

2.4 Through its Access and Equity Strategy, the Commonwealth is committed to the principle that every resident of Australia should have equal access to and an equitable share of the resources managed by Government on behalf of the community. It encompasses all residents of Australia who may face barriers of race, religion, language or culture. Aboriginal and Torres Strait Islander people have been specifically identified as a target group under the Strategy since 1989.

2.5 The Strategy covers policy development as well as program/service delivery, and includes Commonwealth funded programs and initiatives managed by State, Territory or local Governments and non-Government organisations.

2.6 For Aboriginal and Torres Strait Islander people Access and Equity-a key element in the Government's Social Justice Strategy-is of immense potential significance.

While the programs that are specifically tailored to the needs of indigenous people are important to indigenous people, they provide only a small proportion of the totality of services which they, like all Australians, have a right to expect of our Governments. For the rest, they must rely on mainstream programs.

2.7 The fine intentions of the Strategy, however, are not turning into positive results for indigenous people.

2.8 An evaluation of the Strategy in 1992 found that inclusion of indigenous peoples in the Strategy had yet to make its mark, with the barriers to access and equity more marked, more common and more resistant to erosion. A year later, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs presented a report on the Strategy, titled "Access and Equity. Rhetoric or Reality", and came to the same conclusions. The Committee found barriers of racism, language, culture, inappropriately designed and delivered services, and a lack of services in many areas, with women, older people, people with disabilities and youth facing particular additional disadvantage.

2.9 Strong and effective action is clearly needed to make Access and Equity a reality for indigenous Australians. Further discussion and specific recommendations in relation to Access and Equity are included in Chapter 5.

THE ROYAL COMMISSION, AND THE GOVERNMENT'S RESPONSE

2.10 In their response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody, Australian Governments committed themselves to achieving comprehensive reforms that would rectify both the immediate injustices and inequities suffered by Aboriginal and Torres Strait Islander people in the justice system, and address the underlying causes of excessive indigenous involvement with that system. For its part, the Commonwealth endorsed all but one of the Royal Commission's 339 recommendations and announced a number of initiatives, involving additional expenditures exceeding \$400 million up to 1995-96.

2.11 The actual record of achievement, however, is disappointing. Aboriginal and Torres Strait Islander people continue to be grossly overrepresented in the criminal justice system, and deaths in custody continue at an unabated rate. There are disturbing signs that State and Territory Governments are lagging in the implementation of real change to that system. Nor have the Commonwealth's programs yet made a discernible impact on the underlying causes -though it was not to be expected that such deep-rooted and fundamental problems could be corrected in a short time and with a comparatively modest addition to existing resources.

2.12 It is essential that Governments renew and revitalise their commitment to implementing the reforms in their responses to the recommendations of the Royal Commission. The proposals made in this report for further social justice measures are predicated on implementation of reforms proceeding; they do not substitute for or supplant them in any way.

RECOMMENDATION 6.

The Commonwealth Government fully Implement the recommendations of the Royal Commission into Aboriginal Deaths In Custody Including measures to ensure Implementation by State and Territory Governments within their jurisdictions.

RECOMMENDATION 7.

All Governments accept the importance of involvement of Aboriginal and Torres Strait Islander peoples in both Implementation and monitoring of recommendations of the Royal Commission through Aboriginal Justice Advisory Committees (AJACs) and ensure that resources are provided for a national AJAC overview committee.

REVIEWS OF EMPLOYMENT, EDUCATION AND HEALTH

2.13 The Government has before it the reports of three major reviews of its policies for indigenous people. These are:

- the review of the Aboriginal Employment Development Policy (AEDP);
- the review of the Aboriginal and Torres Strait Islander Education Policy (AEP); and
- the evaluation of the National Aboriginal Health Strategy (NAHS), completed in December, 1994.

2.14 Some recommendations of the review of the AEDP were taken into account, to an extent, in the Government's White Paper on Employment and Growth, *Working Nation*. Many recommendations, however, are yet to be addressed. *Working Nation* provides the opportunity for self-determination in the design, development, implementation and review of employment and training programs. Implementation of these programs in line with the principles and practices of social justice enunciated in this report is recommended.

2.15 The AEDP review and its recommendations are highly relevant to the Government's expressed desire, when calling for ideas for further social justice measures, for constructive and realistic proposals that would increase the participation of indigenous peoples in Australia's economic life. It is therefore vital that momentum not be lost in implementing the reforms proposed in the review report.

2.16 The matters covered by the AEP and NAHS reviews are also of crucial significance to the achievement of social justice for indigenous Australians. Those reports, too, must not be allowed to gather dust on shelves. As with the review of the AEDP, however, reforms flowing from these reports should proceed as part of the normal processes of evaluation and improvement of existing programs, and not be regarded as matters for which the social justice 'package' offers a convenient vehicle for implementing a few changes.

RECOMMENDATION 8.

The Commonwealth Government effectively respond to and fully resource implementation of recommendations of:

- a. the 1994 AEDP Review;
- b. the 1994 AEP Review; and
- c. the 1994 NAHS Evaluation.

DECADE OF INDIGENOUS PEOPLE

2.17 The International Decade of the World's Indigenous People was declared in December 1993. The international theme for the decade is *Indigenous Peoples: a new relationship; partnership in action*. The goal of the decade is "strengthening of international cooperation for the solution of problems faced by indigenous peoples in such areas as human rights, the environment, development, education and health".

2.18 Two specific goals of the decade are to achieve acceptance by the UN General Assembly of the Draft Declaration on the Rights of Indigenous Peoples and the establishment of a permanent forum in the UN for indigenous peoples.

2.19 ATSIC has advocated a national approach to the decade that underscores the inherent collective rights of indigenous Australians, and on reinforcing contemporary indigenous cultural identity. Specific initiatives which need to be considered in the context of the Social Justice

Package include:

- an indigenous rights project which would focus on the acceptance by Government of the Draft Declaration of Indigenous Rights and would include an information and consultation strategy; and
- a cultural and intellectual property rights project which will examine the issues of legal protection of cultural and intellectual property rights with a view to legislation.

2.20 Significant progress in these key social justice areas would, in addition to the benefits to indigenous Australians, demonstrate conclusively Australia's commitment to the decade and international cooperation. Recommendations in relation to these matters are made in Chapter 3 and Chapter 6 respectively.

RECONCILIATION

2.21 The Council for Aboriginal Reconciliation has sought to establish the concept of reconciliation since its inception in 1991. The primary focus of the reconciliation process has been on attitudinal change and in raising awareness of key issues which are central to achieving reconciliation and bringing about greater cooperation and communication between indigenous and non indigenous Australians.

2.22 The final recommendation of the Royal Commission into Aboriginal Deaths in Custody sought recognition from Australia's political leadership that reconciliation must be achieved if community division, discord and injustice to Aboriginal people are to be avoided.

2.23 The Council for Aboriginal Reconciliation, which recently produced a report to Federal Parliament 'Walking Together: the First Steps', will also be making specific recommendations to the Government on what further social justice measures might be taken in response to the High Court's decision on Native Title.

2.24 It is quite clear that the process of reconciliation is inextricably linked with the achievement of social justice. Reconciliation can only be achieved in this context. Until there are substantial improvements in the well being of indigenous Australians, until disadvantage is adequately redressed, and until equitable structures and legal frameworks are in place, there can be no reconciliation. It is therefore most important that implementation of reconciliation and social justice initiatives should continue in a parallel and associated way.

CENTENARY OF FEDERATION

2.25 The Centenary of Federation Advisory Committee published its report 2001, *A Report From Australia* in August 1994. While the report contained many recommendations for celebrating the Centenary of Federation it emphasised opportunities afforded by the Centenary for structural change which would make Parliamentary democracy work better and for reform to the Constitution.

2.26 The report supported goals of inclusiveness and drew attention to the opportunity for redefining Australia's nationhood, and acknowledged that one overriding issue must be dealt with in the Australian context:

"It is imperative that there be an assessment of the progress made on reconciliation. Without meaningful progress in the reconciliation process there will be no truly national celebration."

2.27 A Commonwealth commitment to facilitate Constitutional reform to provide recognition for indigenous peoples is of particular symbolic importance to the centenary as it brings together aspirations for redefining nationhood, reconciliation and the inclusive involvement of indigenous peoples in Australian society.

RIGHTS

3.1 Recognition of the rights and entitlements of indigenous peoples lies at the heart of this Report, just as it was central to the High Court's decision recognising native title. The ability to exercise and enjoy those rights is critical to the achievement of social justice for Aboriginal and Torres Strait Islander people.

3.2 The thrust of this Report is to convince Australia that it must make a quantum leap, from patronising and condescending welfarism and the dependency and sense of inadequacy it engenders, to a policy foundation of full recognition of the rights of indigenous peoples.

3.3 In effect, all the proposals that are put forward in this report relate, directly or indirectly, to rights -to citizenship or equality rights the same as other Australians, and to indigenous rights. This chapter examines these concepts and sets out some broad proposals for further action. It does so against the background of:

- international developments relating to indigenous rights;
- the High Court's native title decision; and
- movements to redefine the basis of Australian nationhood.

3.4 The concept of indigenous rights requires particular attention, as it is poorly understood in Australia at this time. As a generality these rights fall within the overarching principle of self determination, and can be divided into 3 groups:

- a. **Autonomy Rights**, which focus upon the right of indigenous peoples to determine the way in which they live and control their social, economic and political development;
- b. **Peoplehood or Identity Rights**, which relate to the right to exist as distinct peoples with distinct cultures; and

- c. **Territory and Resource Rights**, which encompass such things as land entitlements, the right to resources of that land, and the use of those resources.

3.5 It is a complex area in which, inevitably, the pace of progress will vary with the complexity of the issues and the interests affected. The report therefore suggests there is need for a mechanism or mechanisms, recognised by Government and resourced with adequate access to legal advice, to further the recognition of these rights. First, however, the issues relating to the citizenship or equality rights of indigenous peoples are examined.

CITIZENSHIP OR EQUALITY RIGHTS

3.6 The major international human rights instruments contain general provisions prohibiting racial discrimination with respect to defined rights. General citizenship rights set out in international instruments to which Australia is a party, including civil, political, economic, social and cultural rights, are guaranteed equally to indigenous peoples. The following instruments in particular contain relevant articles:

- Convention on the Elimination of All Forms of Racial Discrimination
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights; and
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

3.7 Significantly, equality rights extend under these instruments to economic, social and cultural rights-see for example article 5 on the Convention on the Elimination of All Forms of Racial Discrimination and articles 6-15 on the International Covenant on Economic, Social and Cultural Rights.

3.8 In addition-and of high importance in the context of the International Decade of the World's Indigenous People-there are two emerging international instruments of direct relevance to indigenous peoples. These are:

- *the Draft Declaration of the Rights of Indigenous People*; and
- ILO Convention 169

3.9 Flowing from Australia's obligations under international instruments, the Australian Parliament has enacted the *Racial Discrimination Act 1975 and Human Rights and Equal Opportunity Commission Act 1986*. The Australian Constitution also guarantees religious freedom.

3.10 Despite these commitments and actions, it is well documented that indigenous Australians do not in fact enjoy equal access to even basic services provided by Government, and that rights to equality are not in fact achieving equality in outcomes. For evidence one need look no further than the report of the Royal Commission into Aboriginal Deaths in Custody, the Report of the Commissioner for Aboriginal and Torres Strait Islander Social Justice, and recent reviews of the Commonwealth's Access and Equity Strategy.

3.11 The preamble to the Native Title Act recognises that Aboriginal peoples and Torres Strait Islanders " have been progressively dispossessed of their lands and that this occurred largely without compensation, and successive Governments have failed to reach a lasting and equitable agreement with indigenous peoples concerning the use of their lands. As a consequence, Aboriginal and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society."

3.12 A significant source of continuing disadvantage is the lack of access to basic services and infrastructure, particularly in Aboriginal communities and townships. Additional resources, targeted directly at these communities, is clearly part of the answer. It is also important, however, to examine policy settings and make judgements about whether present arrangements are likely to bring about equality in a reasonable time frame or whether fundamental structural changes are necessary. While the Commonwealth has had the constitutional authority since the 1967 referendum to take a dominant role, the delivery of services has been based on the premise that responsibility is shared with the States and Territories. This was articulated in the *National Commitment to Improved Outcomes in Program and Service Delivery for Aboriginal People and Torres Strait Islanders* endorsed by the Council of Australian Governments in December 1992.

3.13 Fine expressions of intent notwithstanding, buck passing and squabbling over shared responsibility seem an inevitable consequence of present inter-governmental arrangements. As to the Commonwealth's own services, the section of this report dealing with access and equity shows that the objective that every resident of Australia should have equal access to and an equitable share of the resources managed by Government is not turning into positive results for indigenous people. In other words, they are not able to enjoy fully their rights as Australian citizens.

3.14 Basic social rights, such as the right to employment, education, training, a minimum income and access to basic health, housing and community services, are integral to full participation and contribution to Australia's economic and social development. Social justice requires a systematic and coordinated approach to reform which will redress the structural inequality experienced by Aboriginal and Torres Strait Islander peoples. The linkage between citizenship rights and the responsibility of citizens to contribute to the economic and social life of the nation is widely recognised. An effective social justice strategy must integrate land acquisition with the provision of infrastructure and services including access to health, housing, employment, education and training assistance.

3.15 What is required, in addition to reform and additional resources in specific areas of Government activity, is structural change that ensures that indigenous people are fully consulted and involved in determining the design, development and delivery of services affecting them.

3.16 ATSIC under s7(l) of its Act has the function of monitoring the effectiveness of programs for Aboriginal persons and Torres Strait islanders, including programs conducted by bodies other than the Commission. It does not, however, have any specific powers which would enable it to review and evaluate programs conducted by other agencies and, for example, compel the provision of information and the addressing of recommendations at a high level.

3.17 In New Zealand, provision has been made for direct involvement by Maori people. "Te Raranga Kete" provides for a process of monitoring and review of Government services to promote increased achievements by Maori people in education, training employment, health, and economic resource development. This provides the

authority for monitoring and liaising with service providers to implement and safeguard Maori interests in mainstream policies and programs.

3.18 Legislative initiatives to bind Governments to the principles of access and equity and the *Social Justice Principles* of this report would go a long way in achieving fairness and non discrimination and ensuring that citizenship rights are enjoyed by indigenous peoples. The approach adopted in the Environment Protection (Impact of Proposals) Act 1974 should be built upon by legislating to provide a general requirement that the interests of indigenous peoples, including their right to negotiate, are taken into account by or on behalf of Australian Governments or authorities. This should include matters arising in the course of specific purpose payments to State and Territory Governments. It should also cover the formulation of proposals, works programs, negotiating and enforcement of agreements, making and participating in decisions and incurring expenditure.

3.19 The legislation could empower the Minister for Aboriginal and Torres Strait Islander Affairs or ATSIC to require the preparation of reports into aspects of policies, programs and service delivery by other agencies that are relevant to indigenous people, which those agencies would be obliged to consider and to show cause why their proposals should not be implemented. The process should be subject to the Commonwealth's administrative law provisions. The Commonwealth Government also needs to ensure that similar approaches are adopted by other levels of Government.

3.20 Other options for reinforcing equality/citizenship rights through structural and institutional reform include changes to Commonwealth State and community funding arrangements; the assumption by the Commonwealth of primacy in relation to the most compelling areas of need, such as infrastructure, where a national approach is required; and adoption of a regional approach to service delivery supported through agreements. These issues are discussed in other parts of this report.

RIGHTS AS INDIGENOUS PEOPLES

3.21 The collective rights of peoples are increasingly being recognised in international forums. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Political Rights support a collective right of all peoples to freely determine their political status and freely pursue their economic social and cultural development. Recognition of the particular rights of indigenous peoples is gathering momentum through the Draft Declaration of the Rights of Indigenous People and ILO Convention 169.

3.22 In this report it is not possible to do more than outline the major issues relating to the complex and rapidly developing concept of indigenous rights. Much work remains to be done both to flesh out the issues and to develop appropriate proposals for action. As noted earlier, the discussion in this report is based on a three-group classification of autonomy rights, peoplehood or identity rights, and territory and resource rights.

AUTONOMY RIGHTS

3.23 Recognition of and support for indigenous self-determination is fundamental to acceptance of the inherent collective rights of indigenous peoples. As stated in the first report of the Aboriginal and Torres Strait Islander Social Justice Commission:

" . . . the crucial importance of self determination to Aboriginal and Torres Strait Islander peoples is little appreciated by nonindigenous Australians. Correctly understood, every issue concerning the historical and present status, entitlements, treatment and aspirations of Aboriginal and Torres Strait Islander peoples is implicated in the concept of self determination. The reason for this lies in the fact that self determination is a process. The right of self determination is the right to make decisions. These decisions affect the enjoyment and exercise of the full range of freedoms and human rights of indigenous peoples."

3.24 There is no right more fundamental for indigenous people than that of self determination. It is central to addressing the general disadvantage and oppressed condition of Aboriginal and Torres Strait Islander peoples. It underlies the establishment, the functions and the operations of ATSIC and the Regional Councils. The Royal Commission into Aboriginal Deaths in Custody underpinned its 339 recommendations seeking reform of Government policy with a call for Governments to recognise that the pathway to change was to give effect to the principle of self determination.

3.25 It is central to a social justice package that policies, institutional structures and legislation should operate to empower indigenous peoples and provide for collective rights of indigenous peoples. It will be an ongoing task to work out practical frameworks for defining and exercising indigenous rights, but broad areas can be clearly identified as a focus for further work. As an aspirational concept the right to self determination underpins a variety of broader goals and objectives, including:

- an entitlement to land and compensation for dispossession;
- recognition of customary law;
- the reassertion and development of community self governance;
- the negotiation of flexible forms of self government;
- the negotiation of involvement in Commonwealth, State/ Territory and local Government policy, planning and service delivery,
- the development of an indigenous economic base;
- sharing in the mineral and other resources of the land;
- collective rights in relation to the protection of sites and cultural property,
- the authority to negotiate a treaty or document of reconciliation.

3.26 Self determination should not be constrained to operate within the existing legal and political structures. Structures must be able to be changed to take account of indigenous rights. This is essential to securing empowerment of indigenous peoples. Non indigenous Australians must also accept that Aboriginal sovereignty has never been ceded to the Australian State and that indigenous people retain a special status. Indigenous rights are clearly distinguishable from, and additional to, the normal citizenship rights enjoyed by all others who make up multicultural Australia.

3.27 **Native Title and Sovereignty.** The High Court, in rejecting the traditional doctrine of "terra nullius" accepted that native title rights survived British colonisation,

though subject to the sovereignty of the Crown. Where these common law rights are not overridden by legislation, they still prevail.

3.28 What constitutes sovereignty is a complex and difficult subject in itself, but the main focus here is on the basis of the power or authority to make laws. There is an evolving view in Australian law that this authority is derived from the people. In the High Court decision on *Australian Capital Television Pty Ltd v the Commonwealth* Chief Justice Mason said:

"The very concept of representative Government and representative democracy signifies Government by the people for the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by representatives".

3.29 The current preamble of the Constitution which provides that the Constitution derives its legal authority from the British Parliament is obsolete. Since the Australia Act, the British Parliament cannot legislate in relation to Australia. The United States Constitution is based on the concept that sovereignty is derived from the people. With the rejection of the doctrine of terra nullius and the emerging legal view that the powers of Government belong to and are derived from the governed, that is to say the people of the Commonwealth, sovereignty of the people needs to underpin the authority of the Constitution and be inclusive of indigenous peoples.

3.30 The Chairperson of ATSIC in a submission to the Council for Aboriginal Reconciliation put the position in the following terms, 'We see constitutional recognition of constituent indigenous sovereignty as central to the proper recognition of Aboriginal and Torres Strait Islander peoples in an inclusive way within Australian society .. This recognition would not threaten the wider population, it would be based on partnership and reconciliation.'

3.31 Australia has a federal system of Government in which Australian sovereignty is divided between Commonwealth and the States. Local Government, however, is an integral part of the system although it derives its authority from State legislation. These existing divisions should not be seen as immutable. Indigenous self-Government is becoming an increasing reality in other federal systems of Government, and is a desirable option for Australia. That new self governing entities exercising a certain degree of sovereignty can be accommodated within our federal system has already been demonstrated in the case of Norfolk Island, and the establishment of the Torres Strait Regional Authority has been a major step along the road of regional self-determination for indigenous Australians. (See also section on Self-Government in Chapter 4).

3.32 While forms of indigenous self government would vary depending on social and cultural features and geographic locations, it is important that there be scope for negotiation of self government, and recognition that this a legitimate right of indigenous peoples in seeking self determination.

3.33 Internationally Australia has fallen well behind many countries which have similar historical experiences in colonial settlement and domination of indigenous peoples. Many countries have moved much further in redressing politically and legally historical injustices, including through recognition of the inherent rights and unique status of indigenous peoples. In Canada various agreements between the federal Government and Native Canadian groups have established self-government over vast areas. In Greenland, the Danish Government has granted indigenous people home rule and in Sweden there has been the establishment of a Sami Parliament. American relations with Indian tribes is premised on notions of their continuing sovereignty. US Presidents since Richard Nixon have been quite explicit in formally recognising native tribes as

Governments and have outlined policies for recognising and working with Indian tribes on a Government to Government basis.

PEOPLEHOOD OR IDENTITY RIGHTS

3.34 Article 1 of the International Covenant on Civil and Political Rights provides all peoples with a right to self determination. By virtue of that right peoples may freely determine their political status and freely pursue their economic, social and cultural development. This necessarily requires that there be flexible approaches by Government to the initiatives of diverse groups of Aboriginal and Torres Strait Islander peoples. Article I of the International Covenant on Economic, Social and Cultural Rights also states the right of self determination in identical language.

3.35 While the structures of ATSIC and the Regional Councils provide mechanisms for recognising and adapting to regional priorities, there may also be need to consider other mechanisms for accommodating the diverse aspirations and circumstances of groups of indigenous peoples. Regional Agreements and the adaptation of the ATSIC structure along the lines of the model of the Torres Strait Regional Authority provide possible approaches.

3.36 International instruments provide the guiding light for the development of Australian policies for indigenous rights. Apart from peoplehood rights that may be exercised through the process of self determination, international instruments also provide for:

- the right of a group to practice and protect its culture, religion and language (see for example article 27 of the International Covenant on Civil and Political Rights);
- rights relating to cultural and intellectual property (see for example Article 15(l)(c) of the International Covenant on Economic, Social and Cultural Rights);
- rights of indigenous children to their own culture (Article 30 of the International Convention on the Rights of the Child specifically provides that'. . . a child who is indigenous, shall not be denied the right, in community with other members of his her group, to enjoy his or her own culture, to profess and practice his or her own religion , or to use his or her own language);and
- the protection of peoplehood or identity through protection against genocide.

3.37 Several aspects of emerging international documents are also significant.

3.38 ILO 169 (article 4) provides that special measures shall be adopted as appropriate for safeguarding the persons, institutions and property, labour, cultures and environment and that these shall not be contrary to the freely expressed wishes of the people concerned. Article 5 provides for respecting the integrity of the values, practices and institutions in applying the provisions of the Convention, for taking into account problems faced at a group and individual level; and recognising and protecting social cultural and religious values.

3.39 The Draft Declaration of the Rights of Indigenous Peoples is concerned with protection of indigenous peoples against action which poses a threat to their survival as distinct peoples including genocide, acts of violence and removal of children from families and communities. The Draft Declaration also provides for protection against actions which intend to deprive indigenous peoples of their cultural integrity and against

integration and assimilation (article 7), and is concerned with the right to maintain, practice and revitalise cultural traditions. Part IV further elaborates upon the right of indigenous peoples to distinct identity and culture, including in particular at Article 15 a right to control the education system and to educate in language.

3.40 What is important is that Australia commit itself to the principles contained in existing and emerging international instruments as the basis for developing a comprehensive approach to the protection of indigenous rights.

3.41 A practical example of the possible application of an existing commitment will illustrate the significance of this process for the achievement of social justice for Australia's indigenous peoples. Australia ratified the Convention on the Prevention and Punishment of the Crime of Genocide on 8 July 1949. The forcible transfer of children from family and community to an alien environment, a widespread practice in Australia under assimilationist policies, falls within the Convention's definition of genocide. The legacy of this practice is still felt among indigenous families and contributes to mental health problems and family abuse. Compensation for this violation of a basic human right should therefore be considered in the context of the Social Justice measures. A specific recommendation in relation to this matter is made in Chapter 4.

TERRITORY AND RESOURCE RIGHTS

3.42 Particular emphasis needs to be given to the collective ownership of land, a right already recognised at common law and in Native Title and Land Rights legislation. The rights which indigenous people can exercise over their land should not be constrained by existing models of nonindigenous land ownership.

3.43 Emerging international instruments recognise that indigenous rights to land encompass the total environment including natural resources. For example, Article 15 of ILO convention 169 provides that:

"The rights of peoples concerned to the natural resources pertaining to their lands shall be specifically safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of those resources".

3.44 Article 26 of the Draft Declaration on the Rights of Indigenous Peoples states:

"Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right of full recognition of their laws, traditions and customs, land tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation or encroachment upon these rights".

3.45 Land is the base for indigenous identities and the foundation for the enjoyment of indigenous rights. The spiritual, cultural, political and economic value of land needs to be recognised. As indicated by the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Dodson:

"Land is the source of our physical and spiritual sustenance. Removed from our land we are literally removed from ourselves".

3.46 **Co-extensive Rights** The judgement of the High Court in Mabo makes it quite clear that it is possible for native title to co-exist with grants over land by the Crown. Grants by the Crown extinguish native title to the extent of any inconsistency.

3.47 The alienation of native title land for pastoral and agricultural development proceeded for the most part without compensation of any kind. Dispossession through the extinguishment of native title rights has imposed great suffering on Aboriginal people.

3.50 A question that must be faced by modern Australia if it is serious about social justice and reconciliation is whether it was really necessary to extinguish all Aboriginal interests to enable pastoral and agricultural development to proceed. Alternatively, should a new balance be sought which would enable traditional rights to be reasserted and exercised coextensively with the rights of land holders so both indigenous peoples and the land holder would enjoy rights, but of a different type, to the same portion of land. The detriment to large scale land holders would be small; the benefit to indigenous peoples very great.

3.51 There is, of course, nothing novel about multiple rights existing over the same land. Exploration licences, for example, currently coexist with freehold or leasehold tenure. Provision already exists in some pastoral leases for indigenous people to exercise some traditional rights.

3.52 The process by which co-extensive traditional rights to alienated land could be reasserted needs to be the subject of a detailed study by the Government in conjunction with indigenous interests. Options could include creation of new forms of rights under existing property law which run with the title or acquisition of special rights through legislation.

3.53 It should be particularly noted that the large scale pastoral holdings of Australia are not replicated in other countries and this calls for an innovative and reconciliatory approach.

3.54 **Land Management** Land management is also a vital issue. Indigenous land management practices may rely heavily on local ecological knowledge; the incorporation of cultural practices and nonmonetary economic activity. It is most important that there be effective provision of land management support on Aboriginal title land. Responsibility for service provision should be able to be negotiated with appropriate Aboriginal organisations such as Land Councils.

3.55 There should also be scope for negotiated co-management arrangements. Such agreements are in place in North America. Where Aboriginal lands are involved there must be indigenous control. If Aboriginal and non-Aboriginal interests are involved then other approaches need to be negotiated. Highly relevant here, of course, will be the enactment of the legislation to establish the National Land Fund and Indigenous Land Corporation.

3.56 In the Torres Strait, the Torres Strait Regional Authority has indicated a comprehensive conservation and sustainable development strategy is needed as the foundation for the future public policy and economic development in the Torres Strait Region. A Torres Strait Marine Conservation Strategy would be the largest element in this approach, building on the unique relationship between Torres Strait Islanders and the sea. The Strategy should include:

- the basic premise that Torres Strait Islanders are traditional and current users of the marine environment,

- the identification and confirmation of sea rights as part of any land tenure regime, with provision for bona fide local residents who are not Torres Strait Islanders;
- the commitment to a regional economy based in part on marine resources as being both feasible and desirable;
- the recognition that the unique ecosystems and factors affecting these must be managed so as to protect renewable resources and habitat,
- creation of a set of protected areas;
- species-specific management Plans;
- public accountability for ongoing management of resources;
- provision for coordination and development of policies for the marine environment, including direct participation of Torres Strait Islanders in coordination and development at a decision making level; and
- public processes for the development of the overall strategy to allow for full benefit of the wisdom, experience, knowledge and aspirations of the people of the Torres Strait.

3.57 More broadly, the Torres Strait Regional Authority sees its long term aspirations being met through achieving, by an act of selfdetermination, a form of indigenous self government to be negotiated with the Commonwealth and Queensland Governments and the people of the Torres Strait. In achieving this goal, the people of the Torres Strait see the Torres Strait as an integral part of Australia and Queensland, with unique and distinct features.

(Further discussion on land management issues occurs in Chapter 6.)

RELATED ISSUES

FIDUCIARY DUTY

3.58 Australian courts have yet to substantively consider whether Governments at common law owe a fiduciary duty or duty of trust to indigenous peoples, and the extent of that duty. What is nonetheless abundantly clear is that Governments must be meticulous in avoiding the exercise of their powers over indigenous peoples in a way that is arbitrary and unfair.

3.59 The majority of the High Court in *Mabo*, in recognising that customary rights to land were liable to extinguishment by the Crown if there was a clear intention to do so, stated that such extinguishment did not carry with it a right to compensation, at least in those cases where there was no fiduciary duty owed by the Crown to the former customary owners. The Court made it clear that this was subject to any contrary intention such as the *Racial Discrimination Act 1975*.

3.60 While the courts may determine at common law that a fiduciary duty exists and subsequently proceed to give some definition to this duty as cases come before them, it is open to the Government to legislate, perhaps through an amendment to the *Racial Discrimination Act*, to specifically recognise that Governments owe indigenous peoples a fiduciary duty and to codify the key components.

3.61 Such an initiative should be linked to more comprehensive recognition of customary rights. Where legislation overrides customary rights there would need to be a clear legislative intention to do so and provision for compensation.

3.62 Canada may provide a useful guide. Section 35(1) of the *Constitution Act 1982* recognises and affirms Aboriginal and treaty rights existing prior to that date. It has been held by the Canadian Supreme Court that this protects existing traditional customary rights as at 1982 even where these are not supported by a special treaty, proclamation, contract or other legal document. The Federal Government has been held to have a fiduciary duty to protect such rights and in exercising legislative power not to unreasonably infringe such rights. In relation to prior extinguishment, legislation must have indicated a clear and plain intention. Section 35 thus has the effect of protecting customary indigenous rights.

A BILL OF RIGHTS

3.63 The underlying rationale for a Bill of Rights is that individual and minority rights can be infringed by institutions and pressure groups that enjoy access to Government. A Bill of Rights can deter Parliament from abrogating the rule of law and help stop a majority in Parliament from overriding the rights of minorities and individuals.

3.64 The High Court is increasingly turning to international instruments to inform developments in the common law. While the common law is no substitute for a Bill of Rights this type of development does to some degree curtail the potential for abuse. It is a threshold question as to whether rights and freedoms can best be protected through the political process or through the courts, or a combination of the two.

3.65 In any discussion on a Bill of Rights critical issues arise concerning what rights should be included and how they should be defined; how to reconcile individual and collective rights, and indigenous rights with those of the wider community.

3.66 It is clearly premature at this point to formally recommend recognition of indigenous rights within a Bill of Rights or to form definite views on whether these should be entrenched through legislation or the Constitution. More work is required on defining rights and pursuing options for protection which are most appropriate for particular rights.

POSSIBLE INSTITUTIONAL INITIATIVES

3.67 The securing of indigenous rights, and related matters such as proposals for constitutional reform, parliamentary representation and a Bill of Rights, are matters of the highest importance but of considerable complexity. To ensure sustained and well-directed action, they need to be pursued institutionally by a well resourced body, with access to legal resources and under indigenous control. Such a body could be charged with inquiring into and advising how best to recognise indigenous rights in Australia by the year 2000.

3.68 The broad options are to:

- strengthen ATSICs resources in this area,
- expand the role of the Aboriginal and Torres Strait Islander Social Justice Commission; or

- establish a separate body such as an Australian Indigenous Rights Commission.

3.69 During consultations the Kimberley Land Council suggested that the terms of reference for such a Commission would require it to:

- inquire and report into the nature and scope of Aboriginal social justice rights including a collective right to self determination and the specific legal, economic, cultural and political entitlements that are to be recognised;
- make particular reference to the laws and customs of Aboriginal cultures;
- review the present regime of Australian laws and institutions in respect of the outcomes of the above points;
- make recommendations on the specific constitutional and other arrangements required for the recognition of Aboriginal rights;
- report on what arrangements are necessary post 2000, that would monitor the implementation and administration of provisions for the recognition of Aboriginal rights, specifically whether this should be the Aboriginal and Torres Strait Islander Social Justice Commissioner or whether a
- permanent body should be set up for this specific purpose; and
- report on any other relevant matter it considers necessary for the furtherance of these terms of reference.

RECOMMENDATION 9.

The Commonwealth Government must ensure Aboriginal and Torres Strait Islander peoples are able to exercise and enjoy both their general citizenship rights and entitlements and their rights as indigenous peoples.

RECOMMENDATION 10.

The Commonwealth Government should reinforce by legislation, applying to all spheres of Government, access and equity requirements to ensure Indigenous peoples are able to exercise their citizenship rights. The legislation should:

- a. provide a general requirement that the aspirations, Interests and needs of Indigenous peoples, Including the right to negotiate, are taken Into account by all Australian Governments and their authorities, and that they adhere to access and equity principles and the principles of social justice In this report;
- b. require Government agencies to assess the Impact of their programs on Aboriginal and Torres Strait Islander peoples;
- c. require Government agencies, where applicable, to specify Intended outcomes for Indigenous peoples and show cause if specific arrangements for indigenous peoples are not Included;
- d. provide ATSIC with authority to seek reports from Government agencies on aspects of their policies, programs and service delivery relevant to

Indigenous people, including State and Territory programs funded by specific purpose payments; and

- e. ensure that these provisions are subject to the Commonwealth's administrative law provisions or are otherwise judicially enforceable and binding on all levels of Government.

RECOMMENDATION 11.

The Commonwealth Government should commit itself to the principles contained in existing and emerging international instruments as the basis for developing a comprehensive approach to the protection of indigenous rights. These would help guide action in such areas as:

- cultural and intellectual property;
- recognition of customary law;
- flexible approaches to self determination including options of self government and regional agreements;
- entitlements to land and compensation for dispossession including the creation of new forms of co-extensive rights; and
- sharing in mineral and other resources.

RECOMMENDATION 12.

The Commonwealth Government, in taking action to secure the rights of Indigenous Australians, should take full account of the linkages between advancement of those rights and reform in areas relating to:

- the Constitution and Constitutional reform;
- Commonwealth State roles and responsibilities;
- parliamentary reform; and
- funding arrangements.

RECOMMENDATION 13.

The Commonwealth Government should recognise that flexible approaches to indigenous self determination are required and these will involve responsive adaptation of Governmental structures, processes and legislation.

RECOMMENDATION 14.

The Commonwealth Government should acknowledge, preferably in legislation, that it has a fiduciary duty to Indigenous people and should ensure the States and Territories take similar action.

RECOMMENDATION 15.

The Commonwealth Government should make a commitment, following upon consultation and negotiation with Indigenous peoples, to:

- a. ensuring that the endorsement of the Draft Declaration of the Rights of Indigenous People Is achieved without undue delay; and
- b. ratification of ILO Convention 169.

RECOMMENDATION 16.

The Commonwealth Government should resource, in consultation with ATSIC, the establishment of a process for defining indigenous rights and the most appropriate ways of ensuring their enforcement, including consideration of a Bill of Rights.

RECOMMENDATION 17.

The Commonwealth Government should undertake a study on recognition of forms of community title which could give legal recognition to traditional or contemporary communal ownership rights.

RECOMMENDATION 18.

The Commonwealth Government should undertake a study, separately or jointly with study referred to Recommendation 17, in conjunction with ATSIC and other appropriate Indigenous and non-Indigenous interests into the feasibility and scope for the assertion of co-extensive Indigenous rights.

RECOGNITION AND EMPLOYMENT

CONSTITUTIONAL REFORM

4.1 The existing Australian Constitution makes no mention of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander peoples were excluded from the process of constitutional development. At that point in world history there was a substantial body of law establishing the formal basis for relations between the indigenous peoples and colonising Europeans by way of constitutional recognition and/or treaties. However, for the purposes of Australian constitutional development, constitutional precedents in countries such as the US, Canada and New Zealand were largely ignored.

4.2 Historically the Australian Constitution was developed at a time when European colonial expansion was at its height and consideration of the rights of indigenous peoples at its lowest point.

4.3 Until the 1967 referendum Aboriginal people were legally excluded by the Constitution from being counted in reckoning Australia's population. The Commonwealth was also specifically prevented from legislating to make special laws for Aboriginal people.

4.4 The 1967 constitutional referendum removed these negative and excluding references to Aboriginal peoples. As important a milestone as it was it did not provide for inclusive indigenous recognition within the Constitution nor did it address the unique position of indigenous peoples.

4.5 Though subjected to a disappointing history of exclusion and non recognition, Aboriginal and Torres Strait Islander people have for many years been demanding that the Constitution be amended to recognise the unique status of indigenous peoples and to

ensure recognition and protection of Aboriginal and Torres Strait Islander rights so that these may be properly enjoyed and the legacy of exclusion redressed.

4.6 The Aboriginal and Torres Strait Islander Commission has adopted as one of the objectives in its corporate plan the securing of Constitutional recognition of special status and cultural identity of indigenous peoples. In its submission to the Council for Aboriginal Reconciliation the Commission pointed out that constitutional change is an issue which is *"quite central to redefining ourselves as a nation in a way that would promote meaningful reconciliation..."*

4.7 *"With the rejection of the doctrine of terra nullius and the emerging legal view that the powers of Government belong to and are derived from the governed that is to say the people of the Commonwealth we consider that constitutional change should not be minimalist. There needs to be recognition in the Constitution that the sovereign power accorded to Governments is derived from the people including the Aboriginal and Torres Strait Islander peoples whose native title rights predate British colonisation."*

4.8 The development of the details of an indigenous constitutional reform agenda will inevitably take some time to emerge. Broad options which have been raised to date have recently been brought together in a publication by the Constitutional Centenary Foundation entitled *"Securing a Bountiful Place for Aborigines and Torres Strait Islanders in a Modern, Free and Tolerant Australia."* This booklet has been made widely available to assist community discussions.

4.9 The options raised in the discussion paper are to:

- maintain the present situation and do nothing;
- seek to recognise Aboriginal and Torres Strait Islander peoples, their history and their culture in the Constitution;
- enshrine the principle of non discrimination;
- grant the Commonwealth primacy over indigenous affairs;
- negotiate an instrument of reconciliation;
- recognise indigenous people's entitlement to self determination;
- grant self government to remote communities; and
- recognise the inherent sovereignty of indigenous peoples.

4.10 These are not all the possible options. There are a great many matters which if entrenched in the Constitution would foster attitudinal change and a realignment of the power position of indigenous peoples. These might for example include recognition of the unique position of indigenous peoples (clearly distinguishable from other ethnic groups); commitments to access and equity of services and facilities; provision for and legal protection of agreements negotiated with Governments; recognition of specific indigenous rights; creation of parliamentary seats and indigenous parliaments; recognition of indigenous self government (in principle or in relation to particular areas); establishment of Grants Commissions to fund indigenous self government; establishment of ecologically sustainable development planning commissions; establishment of indigenous Territories and States; recognition of national indigenous land and sea rights;

a commitment to constitutional conferences to discuss key issues; and securing of an indigenous treaty or statement.

4.11 Initiatives in many of these areas could, however, initially be addressed in a variety of other ways. Some of these issues are addressed elsewhere in this report.

4.12 The Commonwealth Constitution can be amended only by referendum and requires a Bill to be passed first by the Commonwealth Parliament, a referendum put and passed by an overall national majority and by majorities in a majority of the States. Given the difficulty of constitutional change, indigenous reform may need to be tied into broader processes. It is important that formal linkages be established which ensure indigenous constitutional reform is considered in the context of the coming Centenary of Federation, outcomes of the reconciliation process, responses to the ending of legal links with the United Kingdom, Republic initiatives, and responses to international developments concerning indigenous rights.

4.13 The Chairperson of ATSIC has also pointed to the uncertain source of authority of the Australian Constitution and the opportunity and need for reform which exists as it becomes increasingly accepted within the broad range of Australian society, including the judiciary, that the authority for Australia's paramount law comes from the people rather than an Act of the British Parliament. This doctrine of popular sovereignty derived from the people underpins the United States Constitution and is equally applicable to modern Australia. Constitutional reform in this area provides an opportunity for inclusive recognition of indigenous Australians as a constituent source of constitutional authority because of our historical experience in this continent.

4.14 Processes will need to be set up to facilitate the negotiation of the indigenous constitutional reform agenda with the Government, to provide for effective educational and public awareness for both the indigenous and wider communities and to ensure ongoing indigenous involvement in broader processes which could lead to constitutional reform.

4.15 Consultations: There was overwhelming support from all meetings on the Social Justice package that Aboriginal and Torres Strait Islander peoples must be given proper recognition in Australia's Constitution.

4.16 While it was thought that strong arguments should be put for constitutional recognition it was also generally felt that measures should be put in place for further consultation about how to achieve constitutional recognition and what that might include. It was suggested at a number of meetings that a peak Aboriginal body should be established to continue working on negotiations, discussions and research. An option raised by one meeting was to invite representatives of other indigenous peoples to participate in discussions.

4.17 Other matters highlighted included:

- community consultations, education and awareness programs and availability of expert advice needed to be considered in developing approaches.
- a focus on the specific recognition of indigenous peoples, recognition of distinct cultural identities, recognition of prior ownership and spiritual ownership of country.
- support for the concept of a Bill of Rights and entrenchment in the Constitution.
- constitutional recognition of a treaty.

4.18 The Constitution sets the foundation for the system of Government of the country and the relationships within. It has not properly included Aboriginal and Torres Strait Islander peoples. In order to become an inclusive document and properly acknowledge the unique status of Aboriginal and Torres Strait Islander peoples it must be amended. The Commission recognises the need for wider community support if a referendum is to succeed. There is a need for multi-party support and broad based awareness development initiatives. The Commonwealth Government must provide the necessary leadership.

RECOMMENDATION 19.

The Commonwealth Government should note that the national consultation process in relation to the Social Justice Package showed overwhelming support for the reform of the Constitution especially in relation to recognition of Indigenous peoples.

RECOMMENDATION 20.

The Commonwealth Government should adequately resource a process to manage the Indigenous constitutional reform agenda after consultation with ATSIC and the Council for Aboriginal Reconciliation.

RECOMMENDATION 21.

The Commonwealth Government should commit itself to regional, zone or State-based conventions to discuss options for Constitutional reform and to the principle of negotiating Constitutional reform and adequately resourcing these negotiations.

RECOMMENDATION 22.

Prior to any constitutional referendum, the opinion of the Indigenous community should itself be canvassed through appropriate means, including, perhaps, a survey of Aboriginal and Torres Strait Islander opinion conducted in conjunction with an ATSIC election.

The Commonwealth Government should commit itself to a major public awareness program to create an environment for change and understanding of indigenous Constitutional perspectives.

RECOMMENDATION 23.

The Commonwealth Government should commit itself to a major public awareness program to create an environment for change and understanding of indigenous Constitutional perspectives.

RECOMMENDATION 24.

The Commonwealth Government shall ensure that Aboriginal and Torres Strait Islander people are adequately represented in any national constitutional convention which is held as part of broader processes.

POLITICAL REPRESENTATION

4.19 An essential element in the inclusive involvement of indigenous Australians in Australian life is to provide opportunities for participation in mainstream political processes as well as providing a variety of self determination and self government options.

4.20 The Mabo judgement provides recognition from the highest court in Australia that indigenous peoples occupy a unique and special place in Australia as the original inhabitants with unique rights as indigenous peoples. While indigenous peoples aspire to constitutional recognition and reform, it is also fundamental to consider how Australia's democratic institutions should be adapted to reflect an enlightened approach to indigenous participation.

4.21 The indigenous peoples of Australia are a very special constituency, quite unlike other minorities, with unique interests and special claims to participation in Australia's political processes. Whether, it be Commonwealth, State or Local Government, a democracy based only upon electoral majorities will inevitably be skewed towards the promotion of majority interests and will tend to deny participation of indigenous peoples.

4.22 A fundamental component in the recognition of Australia's indigenous peoples is to provide structures which will guarantee the inclusion of indigenous peoples in Governmental processes.

4.23 Compared to other countries Australia has been well behind for a long time in terms of formal political structures that properly recognise indigenous peoples. In the United States, Canada and New Zealand there are treaty arrangements, some with constitutional authority. The United States has a long tradition of recognising tribes as self governing bodies based on their inherent sovereignty which establishes a proper foundation for interactions with the Federal Government on a Government-to-Government basis.

4.24 In New Zealand four seats in the Parliament are designated for Maori people. Since 1987, the indigenous people of Norway, the Sami, have had their own Parliaments.

4.25 Indigenous Australians are particularly susceptible to shifts in Government policies and funding priorities because of powerlessness. Political participation would foster greater equity in the provision of services and accountability by Governments. It would enable articulation of indigenous policy perspectives, broader participation in policy development and promote a wider understanding of indigenous issues in the broader community.

4.26 Local Government service delivery is a particular problem for indigenous Australians. Aboriginal and Torres Strait Islander interests need to be represented at the local level. There is often a perception amongst local government councillors that decisions on services should be linked to rates revenue rather than need, notwithstanding that this revenue is often only a small percentage of total resources, and that specific funding is also provided to local government authorities based on the number of indigenous people in their areas.

4.27 While it is difficult to define what the appropriate level of indigenous representation should be in the Commonwealth, State and Territory Parliaments and in Local Government it is considered that measures should be taken now to institute political reform. These measures should include:

- reserved seats in Parliament for indigenous Australians at both the Commonwealth and State level;

- Ward structures in local Government areas having significant Aboriginal communities; and
- conditions on Commonwealth Local Government funding which encourage greater indigenous representation on Councils.

4.28 The Aboriginal and Torres Strait Islander Commission has an important representational and advocacy role reinforced by its elective basis and accountability to its indigenous constituencies. The historical evolution of ATSIC has emphasised its program functions. It needs to be recognised that ATSIC has a responsibility to take a leading role, as it did in the native title debate, in fostering reform of Australia's social and political institutions. It is important that ATSIC be able to exercise influence not only in its own right but through Australia's political institutions at national, State and regional levels.

4.29 One concern expressed during consultations was the Public Service status of ATSIC's administrative arm which was seen to compromise the principle of self determination. Another was a perception that ATSIC's advice to Government was inhibited or preempted by the existence of indigenous affairs bureaucracy within the Department of Prime Minister and Cabinet.

4.30 ATSIC has noted community concerns about the employment status of its administrative arm and will examine this matter fully in its next review of the operation of the ATSIC Act. One concern is the need for the Commission to retain access to government processes including the capacity to be properly involved in development of a wide range of new government policy affecting Aboriginal and Torres Strait Islander peoples. The Commission would like to take up with Government options which strengthen self determination within the ATSIC framework without limiting its role in broader government processes. This may involve further amendments of the ATSIC Act but also has implications for other legislation, in particular, the Public Service Act which is currently under review.

4.31 Representatives of indigenous peoples, including ATSIC, should have legally enforceable speaking rights in legislatures and in Local Government councils on issues relating to indigenous peoples. The Chairperson of ATSIC should be entitled to address the Parliament annually to report on the state of indigenous affairs.

RECOMMENDATION 25.

The Commonwealth Government should Investigate the possibility of reserved seats In the Australian Parliament by commissioning a report on how this can be achieved.

RECOMMENDATION 26.

The Commonwealth Government, as an interim measure, should Introduce legislation to provide the Chairperson of ATSIC with the right:

- a. to observer status in the Parliament;
- b. to speak to either House on Bills affecting Indigenous Interests; and
- c. to make an annual report to the nation on indigenous affairs.

RECOMMENDATION 27.

The Commonwealth Government should link financial assistance to local Government with reforms which encourage greater Indigenous political representation.

RECOMMENDATIONS 28.

The Commonwealth Government should reaffirm full membership of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSI) for the Chairperson of ATSIC.

RECOMMENDATION 29.

The Commonwealth Government should ensure that full voting membership of the Council of Australian Governments (COAG) be extended to the Chairperson of ATSIC.

RECOMMENDATION 30.

The Commonwealth Government should continue to foster the development of ATSIC as a self determining Indigenous organisation and be open to ways of strengthening the principle of self determination within its structure. In consultation with the Commission, the Government should consider all options, including the employment status of ATSIC staff, which reinforce this principle without limiting the Commission's role to participate in government policy and program development affecting Aboriginal and Torres Strait Islander peoples.

RECOMMENDATION 31.

The Commonwealth Government should not compromise ATSIC's role as the principal adviser to Government on Aboriginal and Torres Strait Islander affairs. In this regard, the Office of Indigenous Affairs should be abolished or at the very least, its role kept to an absolute minimum, clearly defined and differentiated from that of the Commission.

REPARATIONS AND COMPENSATION

4.32 A fundamental principle of social justice is that there should be compensation for past dispossession of land and dispersal of the indigenous population. The legacy of exclusion on the present Aboriginal and Torres Strait Islander population also frequently has a personal dimension in terms of low life expectancy, poor health, lack of jobs and family separation.

4.33 This demands acceptance by the Australian people of the obligation to repair the damage done to, and the devastation of, Aboriginal people by way of dispossession, oppression, marginalisation and alienation, injustice, psychological trauma and internalisation of conflict, denial of economic independence and resulting degradation.

4.34 The implementation of the recommendations of this report could be an integral part of a plan for action involving the recognition of indigenous rights and the place of indigenous people in Australian society. As is outlined elsewhere in this report, this includes recognition of indigenous peoples as the original owners and occupiers of Australia, recognition of customary law and familial relationships, and recognition of indigenous cultural heritage and systems of land ownership.

4.35 Indigenous peoples have lost their land through a variety of means, for example in most cases the land was granted and leased to non indigenous Australians, in other cases Governments have legislated away reserves set aside for indigenous peoples.

Compensation will need to take into account the circumstances in which the land was taken. However, in the more general sense all indigenous people have suffered loss as a result of dispossession, dispersal and exclusion from equal access to Government services.

4.36 It is important that work should commence as soon as possible into the principles and processes which should underpin compensation. The Kimberley Land Council has for example highlighted the need to redress the past injustices by way of some form of compensation and restitution beyond the scope of the National Land Fund. In addition, just and fair compensation is needed for the impact and consequences of being deprived of traditional means of subsistence; for the inability to pursue law and cultural practices; for restrictions in the enjoyment of human rights and freedoms; for the trauma resulting from forced removal of children from families; and for the oppressive policies and practices of past Governments, non-government agencies and individuals.

4.37 The concept of reparations to remedy damage to indigenous society needs to be considered. It is also important to clarify what is not compensation. It is not appropriate to characterise the provision of services to indigenous Australians to overcome disadvantage as compensation; neither is it appropriate to so characterise measures which enable indigenous peoples to exercise their indigenous rights.

4.38 It is repugnant, unjust and unprincipled for compensation payments to be payable through offsets to allocations for indigenous programs. Compensation payments should be payable by Government from other appropriations which must be specifically identified. Without such a process and safeguards the resolution of compensation issues could be reduced to farcical proportions through redistribution of monies set aside for indigenous purposes.

4.39 As a first step the Government must declare that compensation payments will not be funded through offsetting reductions in indigenous appropriations and instruct the Department of Finance accordingly.

4.40 National approaches to compensation for loss of land should include access to revenue derived from the use of land by non indigenous Australians.

4.41 The Mabo decision gives legal recognition to the concept that coextensive rights may exist on some land. Irrespective of whether the Courts decide in the context of Native Title that pastoral leases extinguish native title there needs to be further consideration about how traditional rights can operate co-extensively on large pastoral properties. A form of compensation could involve the Government acquiring rights similar to Native Title rights from pastoralists and grant co-extensive traditional rights to traditional owners.

4.42 Payment of royalties could provide a general form of compensation. In a regional context, access to royalty equivalents (or a portion of these) should be an essential element of a compensation package with respect to any communities affected by resource development. It should be a guaranteed feature of regional agreements.

4.43 Consultations: The social justice consultations have emphasised that the social justice package must include specific measures to address compensation. The social justice consultations concluded that both national and regional measures were needed to address the needs of displaced persons as compensation for loss of or removal from lands.

4.44 As all Australians benefit from the dispossession of Aboriginal and Torres Strait Islander peoples it is appropriate that a proportion of land tax and rates revenues form

part of a compensation package. Other forms of compensation suggested in consultations included further compensation in the form of land, access to housing, and ownership of revenue-generating property.

4.45 In relation to individual compensation the consultations indicate that one area in particular needs to be addressed by the Government urgently. There should be a compensation process for indigenous people forcibly removed from their families and cultural heritage and for forced relocation of indigenous people onto Government reserves and missions.

4.46 The development of a comprehensive and soundly based compensation package will inevitably take time and require considerable **research**. It is important that this work be initiated now.

RECOMMENDATION 32.

The Commonwealth Government support the principle of negotiating compensation and/or reparations, including at a local and regional level, with Aboriginal and Torres Strait Islander peoples as part of any proposal for a treaty or document of reconciliation.

RECOMMENDATION 33.

The Commonwealth Government commission reports in conjunction with ATSIC into the following compensation/reparations issues:

- mining Royalties as a basis for general compensation/reparations;
- land rates and property taxes as a basis for general compensation/reparations;
- co-extensive title;
- compensation/reparations and regional agreements; and
- personal compensation for forced removal of Aboriginal peoples from their families, loss of land, language, law and culture.

RECOMMENDATION 34.

The Commonwealth Government publicly commit and instruct the Department of Finance that compensation for Indigenous purposes or payable to other persons as a consequence of legislation relating to Aboriginal and Torres Strait Islander purposes shall not be funded in whole or in part by budgetary offsets to programs for Indigenous purposes.

REGIONAL AGREEMENTS

4.47 In Canada, regional agreements have proven to be a most effective policy concept which can respond in a comprehensive way to the broad range of needs of indigenous communities. Canada's achievements in this area are increasingly being examined by indigenous people for their applicability in Australia.

4.48 Under Canadian federal Government policy comprehensive regional agreements have been the primary vehicle for settling native title claims since the mid 1970s.

Regional indigenous claimants are able to negotiate agreements with Governments which provide for a range of defined statutory rights and other considerations which have effect in the settlement area. These may include:

- statutory land rights;
- financial compensation;
- hunting and trapping rights;
- right to representation on land and water management and environmental protection boards;
- right to share in revenues derived from resources; and
- arrangements for forms of self government.

4.49 In Australia there is growing interest similarly in settling a range of social justice issues on a regional basis. There is particular interest in strengthening localised responsibility, commitment and accountability both within indigenous communities and in relations with various levels of Government, their agencies and institutions. The negotiated framework and process provided by a formal regional agreement is seen as the most appropriate way of securing this outcome.

4.50 The Native Title Act makes provision for regional agreements as one basis for settling native title land claims. The preamble to the Act states that "Governments should, where appropriate, facilitate negotiation on a regional basis between the parties concerned in relation to land claims and use of land for economic purposes".

4.51 In his first annual report the Aboriginal and Torres Strait Islander Social Justice Commissioner suggested local and regional agreements should be considered in a Social Justice Package and that they could include a range of matters concerning the acquisition of land, land management, monetary compensation and heritage protection. Negotiation of regional agreements with indigenous people were recommended in the Kelty Report on regional economic development.

4.52 **Consultations:** Most active community support for development of regional agreements has been in areas where there is substantial holdings of Aboriginal land or the possibility of claiming land under the Native Title Act.

4.53 In the Kimberley, for example, there are already moves to promote the accommodation of a range of issues, including native title and community service delivery, in a regional agreement framework. The Torres Strait Regional Authority also sees its efforts to secure greater local autonomy and formal relations with Governments in this context. Development of north Australian indigenous interest was given impetus by a workshop/conference hosted by Cape York Land Council in August 1994.

4.54 ATSIC believes the concept of regional agreements need not, and should not, be restricted to the native title context or to specific geographic regions of Australia. It can be applied to a varying extent in a range of circumstances in which indigenous people live. The basic principles developed to inform a regional agreement policy should therefore be relevant to a range of regional circumstances and be able to accommodate a variety of indigenous interests.

4.55 Issues raised during the consultations included the following:

- service delivery arrangements were a major issue for regional settlement. Other issues included joint management arrangements for protected areas, equity in natural resource development, regional representation in legislative and policy forums and resource sharing;
- Commonwealth Government measures were sought to promote development of regional agreements. The need was recognised for defined processes of consultation and negotiation and resources to be made available to progress the issue; and
- there was concern that regional agreements not be limited to land claims under the Native Title Act nor require relinquishment of native title. Recognition of the right to self determination was seen as primary basis for agreement.

4.56 **The Role for Government.** A clear commitment by Government to the process and measures to increase the leverage or bargaining power for a cohesive indigenous interest at the regional level is necessary for the successful conclusion of comprehensive agreements comparable to those achieved in Canada. While an important factor for negotiation, native title as a single issue, may often not be sufficient to galvanise all indigenous interests or to bring other parties to the table on a range of matters.

4.57 The Social Justice Package could provide the opportunity for the Government to give a clear commitment to the concept of regional agreements particularly as part of a broader reconciliation process. It may also provide the best opportunity for other structural changes which would see greater regional empowerment of indigenous interests.

4.58 The Commonwealth Government must play the central role in setting the environment and facilitating arrangements for regional agreements. This may include:

- underpinning the financial costs of negotiations;
- leverage/incentives in respect of other negotiating parties, eg funding leverage on State or Local Government;
- further empowerment of indigenous negotiating interests, eg control of block funding for service provision,
- willingness to legislate where necessary to provide an effective basis for enforcement of agreements;
- consideration of constitutional reform to make provision for and give protection to regional agreements (eg similar to s. 105A of the Constitution); and
- general facilitation and support.

RECOMMENDATION 35.

The Commonwealth Government accept the concept of regional agreements as a framework for establishing a range of formal relations and settling of outstanding social justice issues on a regional basis.

RECOMMENDATION 36.

The Commonwealth Government commence negotiations with Indigenous interests, after advice from ATSIC, on a set of principles and benchmarks which should underpin the development of Commonwealth policy on and facilitation of regional agreements.

RECOMMENDATION 37.

The Commonwealth Government, without denying the right of any group to seek independently the development, negotiation and establishment of their own agreement, undertake to fund through ATSIC a number of pilot studies in conjunction with regional Indigenous Interests to:

- a. examine the scope and feasibility for formal agreements in respect of service delivery, land use, political and economic development and maintenance and development of cultural life; and
- b. foster the development of Australian experience and expertise in establishing agreements and associated processes.

The selection of diverse regions/communities for pilot projects to be undertaken by ATSIC in consultation and negotiation with Regional Councils and major local community-controlled organisations.

INDIGENOUS SELF GOVERNMENT

"An efficient Torres Strait Government accountable to the people of the region must be the principal and primary focus of all policies. It must provide for real control by regional residents and be the body through which the various needs of the region are met." Getano Lui, Jr, Chairman, Torres Strait Regional Authority & Chairman, Island Coordinating Council, Thursday Island.

4.59 Indigenous self government is one way of giving effect to the principle of self determination. Australia is a federal system of Government in which political sovereignty is shared. This provides a mechanism of accommodating diversity.

4.60 The familiar perception of the Australian federal system is that of a three tiered system of Commonwealth, State/Territory and Local Government each having specific powers and functions. It is an inaccurate view. There are other governmental entities within the Federation. These include Norfolk Island, which has a self governing status, Christmas Island and the Cocos Keeling Islands.

4.61 The powers and functions exercised by the entities in a federal system are not fixed. Even within the framework of the Commonwealth Constitution, with its focus on the division of powers between the Commonwealth and the States, there is significant scope for realignment of powers where the Commonwealth has concurrent responsibilities and also through the use of financial agreements. The powers of Local Government are determined by State legislatures.

4.62 When Australia's federal system was being negotiated indigenous peoples were excluded and disparaged. Colonialism and racism were at their height, and recognition and respect of indigenous heritage and culture was negligible. Indigenous political involvement was not considered. This must be changed.

4.63 Increasingly Aboriginal and Torres Strait Islander people want control over those matters which are important to social and cultural life. The record of non indigenous

efforts has not been very successful in solving the problems that indigenous people experience. There has often been little sensitivity to indigenous cultural values in administration and too much imposing of externally determined policies and programs.

4.64 Prior to colonisation Aboriginal and Torres Strait Islander people had developed complex forms of community governance. Dispossession of land was paralleled by the loss of control over community life and the breakdown of community cohesion. Notwithstanding this dislocation, there remains a strong commitment to traditional values and community association in many parts of the country. The distinctness which Aboriginals and Torres Strait Islanders feel has not been reflected in political arrangements for power sharing. Increasingly, however, indigenous rights to autonomy are being recognised within the framework of self determination.

4.65 Article 1 of the International Covenant on Civil and Political Rights provides all peoples with a right to self determination. By virtue of that right peoples may freely determine their political status and freely pursue their economic, social and cultural development. Self Government is an option through which the right to self determination may be expressed as is recognised by leading world democracies. This provision is also made in Article I of the International Covenant on Economic, Social and Cultural Rights.

4.66 The United States Government delegation to the Working Group on Indigenous Populations in July 1994 as follows, ". . . *the United States Government has supported the concept of self-determination for Indian tribes and Alaska natives within the United States. In our domestic context "self determination" means recognising tribal self governance and autonomy over a broad range of issues.*"

4.67 President Clinton in a speech to tribal leaders at the White House on 29 April 1994 put the position thus: *"In every relationship between our people, our first principle must be to respect your right to remain who you are and live the way you wish to live. And I believe the best way to do that is to acknowledge the unique Government-to-Government relationship we have enjoyed over time . Today I reaffirm our commitment to self-determination for tribal Governments. I pledge to fulfil the trust obligations of the Federal Government. I vow to honour and respect tribal sovereignty based upon a unique historical relationship."*

4.68 In Canada, there is acceptance of the indigenous right of self government. Debate is considerably more advanced than in Australia, being focused more upon the character of self government and upon implementation rather than whether it is an option for indigenous people. The Charlottetown Accord of 1992 included a proposal for constitutional amendment to specifically recognise that the Aboriginal peoples of Canada have the inherent right of self government within Canada.

4.69 The Canadian Royal Commission on Aboriginal Peoples in its 1993 report, 'Partners in Confederation' stated as follows: *"Self Government means different things to different Aboriginal groups. For some, it may mean reviving traditional governmental structures or adapting them for modern purposes. For others, it may mean creating entirely new structures or participating more actively in new or existing institutions of public Government at the federal, provincial, regional or territorial levels. For certain groups, it may involve developing structures of public Governments that would include all the residents of a particular region or territory. For still other groups, it may mean greater control over the provision of governmental services such as education and health care. In discussing the implementation of self-Government, it is important to remember that there is more than one way for Aboriginal peoples."*

4.70 Indigenous self government is not a radical proposal overseas. In Australia, too, it is not a novel concept. Indigenous control over some conventional Government

functions have been pursued for some time. Most of the models which have been applied to date, however, have been modified versions of existing non Aboriginal local Government administration or associated with Land Rights legislation. For example in the Northern Territory, incorporation of indigenous communities is possible under community Government provisions of the Local Government Act (NT). In Queensland, self managing Councils have been established under the Community Services (Aborigines) Act 1984 and the Community Services (Torres Strait) Act 1984. In South Australia, the Pitjantjatjara and Maralinga Land Rights Acts provide self government powers with respect to the management control and use of lands.

4.71 The Aboriginal Councils and Associations Act 1976 was enacted to provide culturally appropriate forms of incorporation of associations and councils for indigenous Australians. Since then, despite the incorporation of many associations, no councils have yet been incorporated. The Minister has recently established a review of the Act to consider issues including the effectiveness of the Act in providing culturally appropriate forms of incorporation. Part III of Act (providing for the establishment of councils which share many of the features of local governments), has been seen by some communities as providing a legislative basis for strengthening indigenous local and regional governance.

4.72 What has been lacking is negotiation of forms of self government which are particularly responsive to matters which Aboriginal and Torres Strait Islanders consider to be important. Models of self government need to be developed which are tailored to the unique social and cultural features and the geographical location of the Aboriginal people concerned. Increasingly, indigenous people are seeking more extensive forms of self government to improve service delivery and accountability at the Regional level.

4.73 The Central I-and Council suggested in the consultation process that in Australia Aboriginal self government could be:

- based on a particular area of recognised Aboriginal land;
- based on a particular Aboriginal community which may consist of or include homeland centres,
- based on a particular geographic region;
- based around regional or local Aboriginal service delivery organisations; or
- clan or language group based.

4.74 ATSIC itself provides a structure which is capable of furthering self determination both at the national and regional level. Its responsiveness to Torres Strait aspirations led to the establishment of the Torres Strait Regional Authority. The Government must be prepared to respond and adapt the ATSIC structure to accommodate emerging regional developments where Aboriginal or Torres Strait Islander people seek to further self government arrangements.

4.75 The Government must be prepared to see the legislative framework of ATSIC as an evolving one which can adapt and respond sensitively to developing and diverse aspirations for greater regional self determination including the option of self government. The amendment of the ATSIC Act in respect of the Torres Strait Regional Authority provided an adaptation which will be vitally important in realising aspirations for greater regional self government in the Torres Strait.

4.76 There is scope for self government arrangements to be negotiated in the context of Regional Agreements. Clearly such agreements would require the negotiation of new arrangements with existing levels of Governments responsible for service provision and for the self governing arrangements to be defined in legislation. Indigenous self government does not imply exclusive power to do all things in a region. It may well need to be negotiated in stages.

4.77 Inevitably, funding arrangements will be of crucial importance to successful self government, and will need to be negotiated in the context of regional agreements. It is clearly unacceptable for responsibility for backlogs in services to be transferred to self governing entities without appropriate funding. It would seem likely that some objective assessment of needs would need to be undertaken concurrently with moves to self government, by a body such as the Commonwealth Grants Commission.

4.78 In the Torres Strait, the Torres Strait Regional Authority has explicitly stated that it seeks the negotiation of a process to achieve self determination in stages, with steps agreed by the people of the Torres Strait area, the Commonwealth and Queensland Governments.

RECOMMENDATION 38.

The Commonwealth Government should acknowledge that:

- a. Indigenous self government is a self determination option for some Aboriginal and Torres Strait Islander peoples;
- b. forms of Indigenous self government should not be restricted by existing divisions of powers and roles and responsibilities between Commonwealth, State and Local Government;
- c. ATSIC provides a structure which is capable of furthering self determination at the national and regional level; and
- d. that Indigenous self government may be the subject of Regional Agreements.

RECOMMENDATION 39.

The Minister for Aboriginal and Torres Strait Islander Affairs consider the outcomes of the Review of the Aboriginal Councils and Associations Act with a view to advising Government on opportunities its reform may provide to extend local and regional models of self-determination, and that this advice be formulated in consultation with ATSIC.

RECOMMENDATION 40.

The Commonwealth Government should facilitate inter governmental negotiations on regional self government in circumstances where such assistance is requested by appropriate Indigenous interests in the region and the Aboriginal and Torres Strait Islander Commission.

RECOMMENDATION 41.

The Commonwealth Government in its consideration of Regional Agreements policy should ensure that provision is made for the option of regional self government

RECOMMENDATION 42.

The Commonwealth Government should facilitate the establishment of a task force involving the Commonwealth and Queensland Governments and the Torres Strait Regional Authority to develop a framework for a Regional Agreement to facilitate greater local control and authority over decision-making in the Torres Strait and mechanisms to enhance the powers and operations of the Torres Strait Regional Authority.

RECOMMENDATION 43.

The Commonwealth Government should give a formal reference to a Parliamentary Committee to examine the steps to be taken towards the development and appropriate forms of self-government for the Torres Strait area.

RECOMMENDATION 44.

The Commonwealth Government should facilitate the negotiation of a regional agreement to define the fundamental aspects of the relationships between the Commonwealth and Queensland Government and the people of the Torres Strait.

RECOMMENDATION 45.

The Commonwealth Government in conjunction with the Queensland Government seek a report from the Commonwealth Grants Commission on the level of services and standard of living enjoyed by the residents of the Torres Strait.

TREATY

4.79 A treaty must forge the ground rules for relationships between indigenous and non indigenous Australians based on justice and equity and the proper recognition of indigenous rights.

4.80 Reconciliation is a process. A treaty must be a living document that is capable of accommodating change and evolution as both indigenous and non indigenous cultures change and evolve. A document in itself will not overcome the historical injustices which have been the lot of indigenous peoples.

4.81 The consultation processes associated with this report indicated widespread, in principle, support for the negotiation of a treaty. Some of the key issues identified for inclusion in a treaty related to compensation, indigenous parliamentary representation, constitutional recognition, a recognition of the realities of indigenous history and the recognition of indigenous rights and in particular the right to self determination. It was also apparent that regional and local circumstances meant that the treaty process needed to be linked to associated regional agreements or subtreaties.

4.82 Aboriginal and Torres Strait Islander people were adamant in the consultations that there could be no acknowledgment in a treaty that indigenous sovereignty had ever been ceded.

4.83 While a treaty should be a central theme of the reconciliation process it is not an end in itself but a means of advancing social justice issues over a broad area.

Much more work needs to be done and consultation undertaken in defining what should be included in a treaty and in developing the indigenous basis for negotiations with the Government.

4.84 ATSIc's initial view is that the starting point in the negotiation of a treaty must be the recognition of fundamental principles and indigenous rights. Possibly the principles of social justice outlined in this report could be developed further to provide a basis for negotiations. It is also important that the Government in response to this report should articulate its own settlement principles and criteria.

4.85 To enable treaty negotiations to proceed there must be adequate resourcing of the treaty process. The onus must be on the Government in this regard.

4.86 It is also absolutely imperative that the treaty negotiation process be fair and proceed on the basis of a level playing field. To this end it is important that the Government should not control the process. The initial stage should involve the development of a negotiated agenda or framework agreement which identifies the subjects for and objectives of negotiations and establishes a timetable and special procedural arrangements for the negotiations.

4.87 The organisation of the indigenous side of negotiations will be complex. ATSIc as the principal elected indigenous body will need to take the initiative in negotiating with the Aboriginal constituency the organisational basis for the future negotiations with the Government and in developing the initial principles. Negotiations will not be able to proceed until there is a broad consensus about indigenous representation.

RECOMMENDATION 46.

The Commonwealth Government should note that the consultations supported the concept of a treaty underpinned by regional agreements.

RECOMMENDATION 47.

The Commonwealth Government agree that the Initial stage In the development of a treaty should be the development of a framework agreement negotiated after both Indigenous peoples and Government have developed settlement principles.

RECOMMENDATION 48.

The Commonwealth Government agree that the negotiation process should be adequately funded by Government.

RECOMMENDATION 49.

The Commonwealth Government agree that a mechanism independent of the parties should be established, after consultation with ATSIc and the Aboriginal Reconciliation Council, to manage the negotiation process.

SYMBOLISM AND INDIGENOUS PEOPLES

4.88 A common theme running through this report is the need for greater recognition of Aboriginal and Torres Strait Islander peoples and their unique status as the indigenous peoples of Australia. During consultations there was overwhelming concern that Government measures should provide for secure recognition of this status and secure protection of both citizenship and indigenous rights. People wanted reforms that would guarantee concrete outcomes for them in basic areas such as law and justice and

provision of essential community services. They also sought proper legal recognition and protection of their inherent rights as indigenous Australians.

4.89 At the same time it was strongly felt that the social justice package provided the opportunity for formal recognition of indigenous peoples and cultures in ways which were symbolically significant to our identity and place in Australia. There was recognition that the symbols and signposts of Australia's national and community identity must be more inclusive of the position of indigenous peoples and cultures-and that symbols of indigenous culture and identity receive acceptance and respect in the wider Australian community.

4.90 There was concern that the anniversary of British colonisation of New South Wales is particularly inappropriate as Australia's national day and serves to exclude and alienate indigenous peoples. Many indigenous people observe this date as a day of mourning or refer to it as 'invasion day'. At the same time Australia's National flag highlights the colonial connection with Britain but ignores the millennia of indigenous settlement and history. Similarly Australia's national anthem refers to Captain Cook's voyage to Australia but contains no reference to indigenous peoples. If Australia were to proceed with constitutional reform which provided for the inclusive recognition of indigenous peoples it would be fitting to celebrate the anniversary of such reform.

4.91 Many Aboriginal and Torres Strait Islander people would like to see a general revamping of Australia's range of national symbols. This would include the redesign of the national flag, adoption of a new national anthem and the proclamation of a more appropriate national day.

RECOGNITION OF THE ABORIGINAL AND TORRES STRAIT ISLANDER FLAGS

4.92 For over twenty years, the strength, pride and solidarity of the Aboriginal community has been expressed through one Aboriginal flag. It has been symbolic of the struggle for recognition of Aboriginal rights. In recent years Torres Strait Islander people have adopted their own distinct flag.

4.93 The flags are increasingly accepted in the wider community and have been flown alongside the national flag for a number of years on Commonwealth Government buildings during National Aboriginal and Torres Strait Islander Week and other official occasions. Some State Governments give similar recognition. However the flags still have no formal recognition within Australian law.

4.94 The display of the Aboriginal flag together with the Australian national flag by Cathy Freeman at the 1994 Commonwealth Games was a cause of great pride for the indigenous community. It was also a highly symbolic act supported by the vast majority of Australians. It is time that the Aboriginal and Torres Strait Islander flags receive official recognition at the highest level and their display encouraged in all appropriate circumstances as the accepted symbols of indigenous Australia.

NATIONAL DAY

4.95 The National Aboriginal and Islander Day Observance Committee (NAIDOC), for over twenty years, has sought the proclamation of a national public holiday or national day of commemoration for Aboriginal and Torres Strait Islander people. National Aboriginal Day and Week are celebrated widely by the indigenous community and also

serve each year as a focus for public education and other institutions to host special activities and events promoting indigenous cultures. The Commonwealth Government should consult with NAIDOC and ATSIC with a view to formal recognition of a national day of commemoration for indigenous peoples.

4.96 **Consultations:** During Consultations, issues which were identified to be addressed by the Australian Government included:

- more extensive use to be made of authentic indigenous place names;
- more accurate use to be encouraged in use of indigenous language and terminology,
- encouragement of use of proper indigenous names when referring to indigenous peoples and places:
- recognition of indigenous peoples in a new Australian national flag, a new national anthem and in the Australian coat of arms;
- abandonment of the anniversary of British colonisation as Australia's national day, and
- formal recognition by Australian Governments of the indigenous flags and recognition of National Aboriginal and Torres Strait Islander Day as a day of national commemoration.

RECOMMENDATION 50.

The Commonwealth Government amend existing legislation or enact new legislation to formally recognise the Aboriginal and Torres Strait Islander flag as the flag of the Indigenous peoples of Australia;

RECOMMENDATION 51.

The Commonwealth Government consult with ATSIC and NAIDOC with a view to proclamation of a national day of commemoration for the Indigenous peoples of Australia;

RECOMMENDATION 52.

The Commonwealth Government establish a Task Force including representation from ATSIC and NAIDOC to recommend a new date for celebration of Australia's national day and to examine the range of national symbolism with a view to ensuring a more inclusive approach to the position and interests of Indigenous peoples.

INFORMATION AND AWARENESS

"Many of the historical experiences inflicted upon Aboriginal people in today's society have both attitudinal and structural foundations ... little has been done to address those attitudinal barriers that continue to exist .. There is a need for a multi-media, community education approach to promote a better understanding of and respect of issues that affect the relationship of indigenous and non indigenous Australians" Submission by the National Federation of Aboriginal Education Consultative Groups.

4.97 Prejudiced attitudes provide a major barrier to full participation in Australian life by indigenous people. Negative stereotypes continue to be part of the reality that indigenous people face. There is great ignorance about Aboriginal life and achievements in Australian by the wider community. The two go hand in hand.

4.98 Social Justice will only be achieved if, at the end of the day, there is a wide understanding of the issues involved by the whole community. Only by a concerted effort to create understanding and avoid misunderstandings will underlying support be generated for the recommendations of this report.

4.99 The NSW Aboriginal Education Consultative Group stated in its submission, *'the main challenge in achieving social justice in education is to counteract racism. Children are not born racist, they learn racism in their socialisation, including education-and not only in the past ... Education systems must play a critical role in eradicating racism'*.

4.100 The abolition of racist attitudes and negative stereotyping needs to be addressed throughout Australian society. Nowhere is this more crucial than in relation to Australia's children. Aboriginal studies needs to be an essential element in the school curriculum and in teacher-training programs. Aboriginal Studies can have a dual role-reinforcing indigenous cultures and educating all Australia about Aboriginals and Torres Strait Islanders.

4.101 Until recently, Aboriginal and Torres Strait Islander peoples' contribution and perspectives in Australia's history have often been ignored or downplayed. Bias and inaccuracy in portraying Australia's history reinforces the need for an education program targeting the wider community as well as indigenous children.

4.102 ATSIC in its submission to the Council for Aboriginal Reconciliation stated, *"Aboriginal people consider that the wider Australian community should be educated about Aboriginal society and Aboriginal history should be taught in schools. There needs to be greater understanding about land rights issues and the basis of Aboriginal connections with the land and the work that Aboriginal groups are taking to get back their land. Schools have a most important role in improving relationships between indigenous and nonindigenous Australians especially in the long term. Through increasing the knowledge and understanding of school children the foundation will be set for more constructive relationships."*

4.103 Tensions inevitably arise when the legitimate reassertion of indigenous rights comes into conflict with economic interests. A particular focus of public awareness campaigns in the post Mabo era needs to be upon fostering an understanding of indigenous interests and culture by those groups most likely to be involved in negotiations in relation to Aboriginal land.

4.104 Each year, Australia's population increases through immigration by a number equivalent to about a third of the total Aboriginal and Torres Strait Islander population. New immigrants are provided with no information about Australia's indigenous peoples. At the same time little is done to address the pervading attitudes of established sectors of the community.

4.105 The effectiveness of a public awareness program will be enhanced by associated initiatives in the media which portray Aboriginal culture with integrity and which provide opportunities for the inclusive involvement of Aboriginal actors and presenters.

4.106 **Consultations:** The major points made in the community consultations were that there should be:

- a commitment to and adequate resourcing for a national public awareness program to educate the wider community about Aboriginal and Torres Strait Islander peoples and cultures;
- a commitment to cultural awareness training and informing non indigenous Australians about indigenous cultures tailored to the diversity of indigenous cultures;
- education and public awareness programs on current indigenous issues;
- accuracy and indigenous perspectives in portraying Australian history and proper recording of Aboriginal histories;
- indigenous involvement in curriculum development;
- a compulsory curriculum in relation to Aboriginal and Torres Strait Islander studies; and
- cultural sensitivity in the education system,

RECOMMENDATION 53.

The Commonwealth Government should make it a condition of education funding that States and Territories Introduce Aboriginal and Torres Strait Islander Studies In all primary and secondary schools and post secondary Institutions.

RECOMMENDATION 54.

The Commonwealth Government should make it a condition of education funding that States and Territories develop educational curricula and programs which seek to eliminate racist attitudes and practices, and promote Inter-cultural understanding, and accurate recording of histories.

RECOMMENDATION 55

The Commonwealth Government should support with adequate funding an ongoing public awareness program through ATSIC and the Council for Aboriginal Reconciliation to promote understanding amongst Indigenous and non Indigenous Australians and ensure a balanced and historical accurate presentation of contemporary Indigenous Issues.

RECOMMENDATION 56.

The Commonwealth Government should ensure all new migrants are provided Information about Indigenous Australian cultures as part of the process of attaining resident status and/or citizenship.

CITIZENSHIP ENTITLEMENTS

ACCESS AND EQUITY

5.1 In Chapter 2 of this report, reference was made to the Commonwealth's Access and Equity Strategy, which enshrines the Government's commitment to the principle that

every resident of Australia should have equal access to and an equitable share of the resources managed by Government on behalf of the community. The Strategy covers policy development as well as program/service delivery, and includes Commonwealth funded programs and initiatives managed by State, Territory or local Governments and non-Government organisations.

5.2 It was noted that studies of the Strategy had shown that, for Aboriginal and Torres Strait Islander people, it has yet to make its mark, with the barriers of racism, language, culture, inappropriately designed and delivered services, and a lack of services in many areas. Women, older people, people with disabilities and youth were found to face particular additional disadvantage.

5.3 Means of strengthening Access and Equity outcomes have also been discussed in this report in the context of citizenship rights in Chapter 3.

5.4 In the report, *Rhetoric or Reality*, the House of Representatives recommended that the Auditor General in conducting program audits include an examination of compliance with the Access and Equity Strategy, particularly to ensure that Aboriginal and Torres Strait Islander issues are being addressed.

5.5 During community consultations, there was widespread support for stronger commitments to improving Aboriginal and Torres Strait Islander access to, and equitable treatment in, all levels of Government program and service delivery. There is much concern among indigenous peoples that, overall, mainstream programs are not meeting needs.

5.6 Many factors were identified as requiring to be addressed. They included:

- institutional barriers to access, including racism;
- appropriateness of service design and responsiveness to community-identified needs,
- accommodating cultural perspectives, including taking account of cultural and social links and boundaries in Aboriginal and Torres Strait Islander communities,
- consultation and indigenous involvement in policy making processes and in service delivery,
- accountability to the Aboriginal and Torres Strait Islander community,
- coordination and rationalisation of service delivery,
- better and culturally appropriate information on services; and
- addressing needs of special groups-youth, women, elders and aged, people with disabilities, and the geographically isolated.

RECOMMENDATION 57.

The Commonwealth Government should improve and strengthen the effectiveness, relevance and performance of the Access and Equity Strategy by making it mandatory that, in respect of all mainstream programs of relevance to Aboriginal and Torres Strait Islander peoples:

- a. program design, development and delivery arrangements recognise the unique needs and aspirations of Indigenous people;
- b. Indigenous people be fully involved In program development, operation and evaluation through Independent structures and procedures which are under their control; and.
- c. the Strategy incorporate the Social Justice Principles of this report.

RECOMMENDATION 58.

The Auditor General In conducting program audits should be required to report on compliance with the Access and Equity Strategy and the Social Justice Principles with particular reference to ensuring Aboriginal and Torres Strait Islander Issues are being addressed and an equitable share of government-managed resources Is being achieved.

REFORM OF COMMONWEALTH STATE FINANCIAL RELATIONS

5.7 Ensuring that indigenous Australians enjoy their full rights as citizens has been a shared responsibility of the Commonwealth and State, Territory and local Governments. For key areas such as health, education, housing and essential service delivery, and the provision of basic community infrastructure, Aboriginal and Torres Strait Islander people are largely dependent on programs and services which fall within the jurisdictions of State, Territory and local Governments.

5.8 ATSIC has recognised the need to work cooperatively with Government at all levels to improve the situation of Aboriginal and Torres Strait Islander people. As ATSIC's funding is supplementary in nature to mainstream resource allocation, it has stressed that this limited funding should complement, not substitute for or supplant, the need for other levels of Government to meet their proper responsibilities.

5.9 Nevertheless it remains the case that State, Territory and Local Governments often fail to ensure that Aboriginal and Torres Strait Islander people enjoy reasonable access to, or equitable treatment in, the development and delivery of their programs. Too often, Commonwealth programs, particularly those delivered by or through ATSIC, have to address the consequences of continuing failure.

5.10 The options are clear-either new and additional resources must be identified and applied to fill the gaps or a greater share of existing mainstream resources must be directed to meeting these problems.

5.11 In the absence of a more enlightened approach by State, Territory and local Government, the Commonwealth must take more radical steps to bring national social justice policy objectives to bear. An important mechanism will be the use of financial leverage in relations with other levels of Government. Key issues to be resolved are:

- The enormous level of unmet need in Aboriginal and Torres Strait Islander communities for basic service delivery such as housing and infrastructure which results from a failure of Governments responsible for delivering those services;
- ensuring access and equity for Aboriginal and Torres Strait Islander people who are largely reliant on mainstream service delivery from all levels of Government, and

- ensuring an adequate and equitable range of service delivery in respect of remote and predominantly Aboriginal and Torres Strait Islander communities.

5.12 The issues paper prepared as part of the Social Justice consultations identified a number of ways in which the Government might act to ensure that Aboriginal and Torres Strait Islander people were able to enjoy a more equitable level of service and program delivery within the jurisdiction of other levels of Government. These were:

- making greater efforts to effect agreements with the States and Territories under the *National Commitment to Improved Outcomes for Aboriginal Peoples and Torres Strait Islanders in Delivery of Programs and Services*;
- imposing specific requirements on the States and Territories that funds provided by the Commonwealth are used in a way that adequately addresses the needs of indigenous peoples; and
- provide greater direct funding to Aboriginal and Torres Strait Islander communities to provide their own services or contract their provision.

5.13 The National Commitment: In December 1992 the Council of Australian Governments endorsed a *National Commitment to Improved Outcomes in the Delivery of Programs and Service for Aboriginal Peoples and Torres Strait Islanders*.

5.14 The *National Commitment* took as its guiding principles:

- a. empowerment, self determination and self management by Aboriginal peoples and Torres Strait Islanders;
- b. economic independence and equity being achieved in a manner consistent with Aboriginal and Torres Strait Islander social and cultural values;
- c. the need to negotiate with and maximise participation by Aboriginal peoples and Torres Strait Islanders through their representative bodies, including the Aboriginal and Torres Strait Islander Commission, Regional Councils, State and Territory advisory bodies and community-based organisations, in the formulation of policies and programs that affect them;
- d. effective coordination in the formulation of policies, and the planning, management and provision of services to Aboriginal peoples and Torres Strait Islanders by Governments to achieve more effective and efficient delivery of services, remove unnecessary duplication and allow better application of available funds; and
- e. increased clarity with respect to the roles and responsibilities of the various spheres of Government through greater demarcation of policy, operational and financial responsibilities.

5.15 The National Commitment committed all Governments to ensure that Aboriginal and Torres Strait Islander peoples received no less a provision of services than other Australian citizens. All Governments aimed to meet this right by providing:

- improved access of Aboriginal peoples and Torres Strait Islanders to mainstream programs;

- services which are adequate and culturally appropriate;
- appropriate information about rights to and availability of services;
- effective resourcing of services; and
- Aboriginal peoples and Torres Strait Islanders and communities with the opportunity to negotiate, manage or provide their own services.

5.16 *The National Commitment* provides for the negotiation of formal agreements to spell out clearly each Government's roles and responsibilities. Initial areas which have been highlighted by ATSIC for negotiation of formal agreements with the States and Territories are health, housing, infrastructure, employment, business funding and land management.

5.17 ATSIC is concerned that some two years after endorsement of the *National Commitment* there is no evidence that it has resulted in any significant improvement to program and service delivery at either Commonwealth, State or local Government level. To date there have been no formal agreements completed between the Commonwealth and the States/Territories which incorporate its principles.

5.18 The *National Commitment* provides an agreed policy framework for Governments to cooperate to address Aboriginal disadvantage and to pursue social justice. However without substantial commitment from all levels of Government, its will not be realised. The Commonwealth should consider taking a much stronger leadership role in the allocation of resources, including the introduction where necessary of incentives or sanctions. The failure by Governments to provide effective services to Aboriginal and Torres Strait Islander people and the mandate given the Commonwealth in the 1967 Referendum provide the basis for the Commonwealth to assume primacy in Aboriginal and Torres Strait Islander affairs.

5.19 **General Purpose Funding:** Significant questions of equitable distribution of resources arise in the area of Commonwealth general purpose funding and the policy of fiscal equalisation. The Commonwealth allocates general revenue grants to the States and Territories based on assessments of the Commonwealth Grants Commission (CGC). Funding for local Government is provided under the Local Government (Financial Assistance) Act.

5.20 In assessing expenditure needs of the States and Territories the CGC takes into account disability factors which affect each Government's ability to provide an average level of services to all citizens. Specific account is taken of the cost of service provision to Aboriginal and Torres Strait Islander peoples across a range of functional areas, including primary and secondary education, general medical services and public health, Aboriginal community services, police, administration of justice and corrective services.

5.21 Local Government is assessed in a similar way by the Local Government Grants Commissions in each State and the Northern Territory where recommendations for the distribution of funds between local governing bodies take account of the costs of delivering services to Aboriginal and Torres Strait Islander people.

5.22 While the principle of fiscal equalisation is one of equity, it does not necessarily result in equitable distribution of resources and access to services at a community level. A further source of inequitable treatment derives from disregard in the process of the capital deficit which underlies the appalling state of indigenous communities. The servicing needs of Aboriginal and Torres Strait Islander people are taken into account in determining expenditure requirements, but there is no requirement for States and

Territories or local Governments to provide equitable levels of service to Aboriginal and Torres Strait Islander communities, nor for effective monitoring of resource allocation.

5.23 ATSIIC has serious concern that the normal citizenship entitlements of Aboriginal people will continue to be neglected while State, Territory and local Government are not accountable for the equitable distribution of general purpose funding and there is no way of ensuring that capital expenditure on public infrastructure projects is undertaken so as to support the equitable provision of services. If satisfactory outcomes cannot be ensured by way of Government-to-Government agreements under the *National Commitment*, then alternative strategies must be examined.

5.24 Specific Purpose Payments: Specific Purpose Payments (Spps) provide one clear opportunity for the Commonwealth to encourage States and Territories and local Government to provide a more equitable servicing of indigenous community needs.

5.25 A large proportion of SPPs (estimated to exceed \$17 billion in 1994-95) cover areas of significance to Aboriginal and Torres Strait Islander communities and individuals. Areas include education, health, housing and the provision of infrastructure and essential services.

5.26 However, in only three program areas, within general areas of education, housing and employment training, are SPPs specifically directed towards meeting the needs of Aboriginal and Torres Strait Islander people. There are no requirements across the broad range of SPPs for State and Territory Governments to specifically address social justice outcomes for Aboriginal and Torres Strait Islander people.

5.27 While SPPs provide an existing mechanism for the Commonwealth to exert a national policy influence, little of their potential is used. Of particular concern are implications for indigenous people of current moves to both reduce the incidence of SPPs and allow greater flexibility in spending policy of the States and Territories under these arrangements. This trend is most unlikely to persuade States and Territories to focus greater effort on meeting current disadvantage and ensuring more equitable allocation of their resources.

5.28 SPP arrangements can give real effect to the principles of the *National Commitment* and to the letter and intent of the Government's *Access and Equity Strategy*. Unless SPP agreements deal with matters of little or no relevance to Aboriginal and Torres Strait Islander people, they should include, as a matter of course, appropriate provisions for ensuring that indigenous interests are properly addressed.

5.29 There is also the opportunity to reinforce principles of other particular major policies which impact significantly on relations with the States and Territories. These include the Aboriginal Employment Development Policy, the National Aboriginal and Torres Strait Islander Education Policy, the National Aboriginal Health Strategy, and the response of Governments to the Report of the Royal Commission to Aboriginal Deaths in Custody.

5.30 Legislation is already in place which would enable the Government in some instances to introduce conditions to SPPs which would ensure equitable distribution of resources to indigenous communities. A particular opportunity exists in this regard under the Local Government (Financial Assistance) Act.

5.31 There is also scope for identified expenditure within General Revenue Grants to be redirected as an SPP. A particular area is the category of Aboriginal community services which is identified by the Commonwealth Grants Commission. This category includes recurrent State and Territory type expenditure on community management and

services, operating, repair and maintenance of essential services such as water, power, sewerage, airstrips, barge landings, cyclone shelters and minor new works and assets.

5.32 The overwhelming level of unmet need for basic services in Aboriginal and Torres Strait Islander communities and the past failure of Governments to ensure indigenous peoples are able to enjoy their rights and entitlements to basic services demands major and urgent reform.

5.33 **Direct Funding:** For many communities there is growing realisation that the complexity, lack of coordination, buck passing and cost shifting which result from shared responsibility is an intractable and major problem. For discrete communities in particular, there is growing support for direct funding by the Commonwealth to enable the provision of a range of basic Government services.

5.34 There are already precedents for direct funding of Aboriginal communities in the Northern Territory for local roads under the Commonwealth Government's *Local Government (Financial Assistance) Act*.

5.35 The advantages of a single funding regime were reflected in recommendations 190 and 191 of the Royal Commission which called on Governments to develop a system of block funding of Aboriginal communities and organisations, incorporating a single source of funding, a single set of audit requirements and maximum devolution of power to those communities and organisations to determine priorities.

5.36 In its Report on the 1993 Review of General Revenue Grant Relativities, the Commonwealth Grants Commission acknowledged a number of issues raised with it through submissions from Aboriginal organisations. Among those highlighted was a proposal that the Commonwealth Grants Commission undertake an inquiry into how fiscal equalisation could be applied to Aboriginal communities and how relative needs of communities, their governing bodies and service organisations could be assessed and funded directly by the Commonwealth.

5.37 The Commission noted that it had in the past conducted a similar inquiry into local Government but that any new inquiry into Aboriginal community needs would require a reference from Government and probably also an amendment to the Act under which it operates. ATSIC notes that the Commission's examination into extending principles of fiscal equalisation to funding of the Cocos (Keeling) Islands could also be relevant to such an exercise.

5.38 **Consultations:** In all community consultations there was overwhelming condemnation of existing arrangements which allowed State, Territory and local Governments to neglect responsibilities to their Aboriginal and Torres Strait Islander citizens. It was generally felt that the Commonwealth should assert its special responsibility in ensuring that standard citizenship entitlements were adequately met.

5.39 In respect of Commonwealth payments to and through the States there was wide support for introduction and enforcement of performance requirements across a range of functional areas including health, education, essential services and community infrastructure, and law and justice.

5.40 Current arrangements were seen as grossly deficient in ensuring adherence to access and equity principles, public accountability for both resource allocation and achievement of outcomes, and indigenous involvement in planning, monitoring and delivery of programs and services.

5.41 There was considerable support, particularly in respect of discrete communities, for the Commonwealth to examine methods to provide funds direct to indigenous communities, perhaps through Regional Councils, to provide their own services or contract their provision. For many communities direct funding was seen as a major step in achieving self determination as well as ensuring that adequate resources were provided for servicing indigenous community needs.

RECOMMENDATION 59.

The Commonwealth Government in determining its relationship with State, Territory and local Governments should be guided by:

- a. the principles of Social Justice outlined in this report;
- b. the principles of the National Commitment;
- c. access and equity principles;
- d. the findings of the Royal Commission Into Aboriginal Deaths In Custody-, and
- e. national Aboriginal and Torres Strait Islander policies in functional areas such as education, employment and health.

This recommendation applies particularly in respect of Recommendations 60 to 66.

RECOMMENDATION 60.

State, Territory and Local Governments should be required to account for activities funded through the Commonwealth's General Revenue Assistance and from their own revenues which impact on Indigenous peoples and should ensure that Aboriginal and Torres Strait Islander peoples receive adequate access to, and enjoy equitable treatment in, programs and activities so funded.

RECOMMENDATION 61.

The Commonwealth Government ensure that all future Specific Purpose Payment (JSP) arrangements which have the potential to affect service delivery to Aboriginal and Torres Strait Islander peoples include conditions specifically aimed at ensuring that Indigenous people have full access to and equitable treatment in, programs funded under those arrangements.

RECOMMENDATION 62.

The Commonwealth Government should, in consultation with ATSIC, initiate a comprehensive inquiry into the level and effectiveness of expenditure by the States and Territories and local Government on service provision for Aboriginal and Torres Strait Islander peoples. This inquiry should be conducted by the Commonwealth Grants Commission or an independent expert as a matter of urgency and be completed by the end of 1995. The inquiry should have particular regard to current assessments of State/Territory expenditure requirements and general community standards, and would encompass, among other things:

- a. recurrent and capital needs of Indigenous communities to upgrade and maintain service provision to an acceptable and standard level, comparable to wider community standards, by 2001;
- b. the range of revenue sources for Aboriginal and Torres Strait Islander community service provision, Including community raised revenue and that currently provided or administered at Commonwealth, State/Territory or local Government levels; and
- c. options for funding service provision on a regional basis.

RECOMMENDATION 63.

The determination of recurrent expenditure requirements of the States and Territories In respect of Aboriginal Community Services should be based on an Independent assessment of community needs and excluded from the Commonwealth Grant Commission assessments for the purposes of General Revenue Grants to the States/Territories and

- a. Aboriginal and Torres Strait Islander Community Services be funded by Specific Purpose Payments, and
- b. an additional category of Specific Purpose Payments be established for funding of capital works.

RECOMMENDATION 64.

The Commonwealth Government, In considering programs funded through Specific Purpose Payments, examine the scope for, and trial where possible, direct funding of Aboriginal communities.

RECOMMENDATION 65.

The Commonwealth Government include special measures In SPP arrangements, Including incentives where appropriate, for furthering the Implementation of the recommendations of the Royal Commission Into Aboriginal Deaths In Custody.

RECOMMENDATION 66.

The Commonwealth Government ensure conditions are attached to its funding of local Government under provisions of the Local Government (Financial Assistance) Act to ensure:

- a. effective and equitable provision of local Government services to Aboriginal and Torres Strait Islander Individuals, households and communities;
- b. funding Is effectively coordinated with direct program assistance to Aboriginal and Torres Strait Islander peoples; and
- c. greater indigenous participation in Local Government.

FUNCTIONAL AREAS

5.42 This report does not seek to canvas in detail the many recommendations and developments proposed in the multitude of reports and studies about indigenous programs and particular functional areas. Too often, however, these reports developed in consultation with Aboriginal and Torres Strait Islanders, have not led to substantive gains. It is one thing to know what needs to be done; it is another to have the resources, tenacity and commitment to bring about effective implementation.

5.43 One of the major thrusts of the social justice consultations related to seeing more effective implementation of recommendations of existing reports and adequate resourcing of existing programs.

5.44 While the focus of this report is, at the request of the Government, on institutional and structural change, social justice cannot be achieved without addressing the issue of resources. As well as the key areas of housing and infrastructure, health, education, economic development and employment, the consultations also drew attention to the essentiality of targeted programs which both focus both on critical areas of neglect and on reinforcing positive aspects of indigenous life.

5.45 These include cultural development, language maintenance, sport and recreation and community and youth support programs, more initiatives in the areas of substance abuse, law and justice -including police watch committees, aged care, mental health and a focus on indigenous women's issues. One of the most important single steps in the achievement of self-determination and social justice for Aboriginal people is to redress the negative effects of poverty.

5.46 In this part of the report, we seek only to highlight areas of particular concern in consultations which have major structural implications, to reinforce the need to implement key recommendations of recent studies, or to address matters which the Advisory Committee considered were particularly relevant in the social justice context. It is neither possible nor intended to comprehensively cover the range of issues which should be the concern of Government and need to be addressed in their proper policy context.

HOUSING AND INFRASTRUCTURE

5.47 The 1989 National Aboriginal Health Strategy (NAHS) Report, the Royal Commission into Aboriginal Deaths in Custody and ATSIC's own National Housing and Community Infrastructure Needs Survey have all highlighted the substandard and overcrowded conditions in which many Aboriginal and Torres Strait Islander people live. Historically Aboriginal and Torres Strait Islander people have not been provided with the standard municipal infrastructure and services taken for granted in other Australian communities.

5.48 Some of the key findings of the Needs Survey are that in non urban areas alone some \$1.0888 billion is required to address the backlog of dwellings, \$280 million is required for upgrading existing housing, \$347 million is required for the upgrade of internal access roads, nearly 3000 Aboriginal people do not have access to water supplies of an acceptable standard and nearly 200 communities either do not have sewerage or have unsatisfactory systems. The NAHS report estimated that some \$2.5 billion was required to fund the backlog in housing and infrastructure.

5.49 Against this background the allocation by the Government of an additional \$171 million over five years to fund housing and essential services under the NAHS is manifestly inadequate.

5.50 There is no structural mechanism in place which provides the capacity to bring about equalisation of the capital housing and infrastructure requirements of Australian communities. Grants Commission processes are confined to providing for capacity equalisation in relation to recurrent expenditure.

5.51 Unless the capital deficit of indigenous communities can be redressed in a systematic way there is absolutely no possibility that social justice can be achieved by the year 2000. While these areas have traditionally been State responsibilities the consequences of historical neglect have created a problem of national dimensions. In our view the Commonwealth should itself assess what is required, supplementing ATSIC's own survey by a Grants Commission assessment, and provide a mechanism for the provision of capital grants commensurate with need and equity.

5.52 Making the best use of the limited available funds is a major challenge. An immediate task is the better coordination of ATSICs Community Housing and Infrastructure Program (CHIP) with the Aboriginal Rental Housing program requiring the establishment of indigenous housing bodies in each State. A Government decision to examine the channelling of Aboriginal Rental Housing Program funds through ATSIC was made in November 1991. However, the negotiation of agreements under the *National Commitment* to achieve this outcome remains outstanding.

5.53 The Australian Local Government Association in its submission has also emphasised the importance of establishing a Task Force to increase coordination of funding between Local Government, ATSIC and other spheres of Government

5.54 Unless a concerted systematic, incremental and targeted approach is taken to overcome the backlog and expanding need, the appalling conditions will still exist in the year 2001 (see also recommendation under following section on Health)

RECOMMENDATION 67.

The Commonwealth Government introduce a National Aboriginal and Torres Strait Islander Housing and Infrastructure Program to remedy the capital deficit of Indigenous communities by 2001.

HEALTH

5.55 The primary objective of health programs relating to Aboriginal and Torres Strait Islanders is to improve health levels so they are commensurate with the wider community. There is an appalling disparity in health status between indigenous and non indigenous Australians

5.56 The unacceptably high rates of infant mortality, significantly lower average life expectancy and high rates of hospitalisation and disability is likely to continue until the underlying socioeconomic causes are redressed effectively.

5.57 Aboriginal health has been subject to extensive scrutiny in recent years. The National Aboriginal Health Strategy was established in the late 1980s as the basis of a combined response by Australian Governments to pressing health needs of indigenous peoples. Politicians continue to recognise that much more needs to be done. Funding, however, is not commensurate with need. Only an additional \$162m was allocated for health programs over the period 1994-95 to 1998-99.

5.58 A review of the Aboriginal Health Strategy was completed in December 1994. The Committee established to evaluate the National Aboriginal Health Strategy, however, found little evidence of it. The major findings of the Evaluation Committee are:

- the National Aboriginal Health Strategy was never effectively implemented;
- all Governments have grossly under-funded NAHS initiatives in remote and rural areas if the objective of environmental equity by the year 2001 is to be attained;
- there has been a lack of accountability for implementation of the June 1990 NAHS Joint Ministerial resolutions and inadequate program management information where Commonwealth NAHS funds have been applied,
- ATSIC has been a convenient scapegoat for inaction and the failure of Governments to deliver;
- the National Council of Aboriginal Health which was established to oversee implementation of the NAHS lacked political support from the Commonwealth and State/ Territory Ministers and ATSIC,
- there have been some encouraging recent developments in line with the NAHS taken by a number of Governments;
- if the Commonwealth wants to achieve environmental health equity by the year 2001 there will need to be substantial increases in funding for housing and essential services in remote and rural regions in Australia, including the Torres Strait, over the remainder of the decade;
- if the Commonwealth responds by making provision for extra funding, priorities could be quickly established in a spirit of cooperation between the major players,
- the provision of housing and essential services should be accompanied by strategies for improved maintenance of facilities and appropriate education, including health services and promotion, to equip individuals to achieve a lifestyle and level of economic stability which permits healthy choices;
- local community involvement and participation as espoused in the NAHS is critical not only to improving quality of life but also to attainment of an experience of health and length of life to be expected in a technologically advanced nation;
- public health providers need to be create meaningful coalitions with Aboriginal and Torres Strait Islanders so that communities and individuals can make informed choices regarding health;
- health providers need to be focused on outcomes and health gains, and not the process of health care organisation and financing,
- the Commonwealth objective of 'gaining equity in access for Aboriginal and Torres Strait Islander people to health services and facilities by the year 2001'- if taken to include 'environmental health facilities' (for example, housing and essential services)- is unattainable at both current and projected levels of funding; and
- health statistics show that Aboriginal and Torres Strait Islander peoples are so far behind the rest of the Australian community, that equity considerations demand national large scale affirmative action programs in environmental health.

5.59 The review recommended that provision of further Aboriginal health funding by the Commonwealth to the States and Territories needs to be contingent upon bilateral agreements developed between States and Territories and the Commonwealth pursuant to the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders*.

5.60 The review also made specific recommendations about approaches to program provision in the area of housing and infrastructure noting that adequate links are yet to be established between capital provision and employment, education and training objectives. It supported agreements with State, Territory and Local Governments to cooperatively address the backlog of community housing and essential services and for providing scope for Regional Service Agreements within this framework. It is also imperative, however, that recurrent expenditures for primary health services remain a key priority.

5.61 There can be only limited progress if the focus of future administrative arrangements emphasises Aboriginal health services without improving the range and availability of mainstream programs administered by the Commonwealth and State agencies. Mainstream programs constitute the bulk of the national effort and consume the major part of national health resources.

5.62 Mainstream health arrangements must be structured to specifically address the disparities in Aboriginal and Torres Strait Islander health outcomes. The Medicare agreements have the capacity to influence the provision of health services and foster better Aboriginal health. In particular the agreements could be used to:

- ensure the provision of national uniform health data on Aboriginal and Torres Strait Islander peoples;
- as a means for monitoring of access and equity outcomes;
- bench marking in relation to services provided to Aboriginal and Torres Strait Islander peoples;
- the appointment of Aboriginal and Torres Strait Islander peoples to Boards of Hospital and health facilities; and
- the provision of indigenous health employment opportunities particularly in line with the AEDP

RECOMMENDATION 68.

The Commonwealth Government Implement the recommendations of the National Aboriginal Health Strategy Evaluation and In particular address the health Implications of the living environment of indigenous communities (See also Recommendation 64)

EDUCATION

5.63 The introduction to the National Review of Education for Aboriginal and Torres Strait Islander Peoples states, "Aboriginal peoples and Torres Strait Islanders are the first Nations of this continent and have inalienable rights as the indigenous peoples of Australia. Education is one of these rights."

5.64 It is important that all Governments reaffirm their commitment to the National Aboriginal and Torres Strait Islander Education Policy and address the recommendations of the review of this policy resolutely and with support of the necessary resources.

5.65 Of particular relevance to Social Justice is how to achieve equity and reconciliation in and through education for Aboriginal and Torres Strait Islander people. As indicated in the AEP Review this must be based on two fundamentals:

- embracing the first nations' heritage as part of Australia's national heritage; and
- respecting equally the culture and values of Aboriginal peoples and Torres Strait Islanders and the cultures and values of non-indigenous Australians.

5.66 The review suggests that while these attitudes are intangibles which cannot be prescribed by Governments, changes in attitudes would be enhanced by formal Government adoption of the following set of principles which underpin the recommendations of the report:

- *self-determination in education -putting* the authority to make decisions in the hands of Aboriginal peoples and Torres Strait Islanders,-
- diversity-empowering Aboriginal peoples and Torres Strait Islanders to exercise the maximum degree of choice in education;
- *subsidiarity-shifting* responsibility for and about education for Aboriginal peoples and Torres Strait Islanders as far 'down' administrative systems as possible, given the demands of accountability and the efficient delivery of services;
- affiliation-ensuring coordination between groups as far 'up' the administrative system as Aboriginal and Torres Strait Islander communities and organisations wish, to pursue shared aims and to achieve economies of scale; and
- *efficiency-of* the available resources, minimising the amount of money spent on administration and maximising the amount of money spent on actually providing educational services for Aboriginal peoples and Torres Strait Islanders.

5.67 During the consultations considerable emphasis was placed on the linkage between education and public awareness of indigenous cultures and history. Aboriginal and Torres Strait Islander studies were seen as a key element in improving race relations and making education more relevant. (Some further discussion of this matter is included under the section on Public Awareness.)

RECOMMENDATION 69.

The Commonwealth Government reaffirm Its commitment to the Aboriginal and Torres Strait Islander Education Policy and resolutely address the recommendations of the Review of the AEP.

LAW AND JUSTICE

*"It is no good spending money on a report, if it is not going to be implemented."
(Emerald) "Instead of reinventing the wheel, surely with over 300
recommendations, and all State Governments have agreed to this, the work is
already done there." (Launceston)*

5.68 The final Report of the Royal Commission into Aboriginal Deaths in Custody documented the profound disadvantages suffered by Aboriginal and Torres Strait Islander peoples and in particular their overrepresentation in the criminal justice system.

5.69 Three years after the Report was presented, deaths in custody are continuing and there has been no significant reduction in their occurrence. The over-representation of indigenous people in the prison system continues at levels some 15 times the level of the general population with the over-representation of indigenous women in the prison system even more pronounced. Notwithstanding the explicit commitment by all Governments to address most of the recommendations of the Royal Commission's Report, indigenous people are deeply disturbed that implementation has fallen far short of reasonable expectations and what is clearly required.

5.70 Disproportionate contact with the criminal justice system is a manifestation of a general failure of Australian society to achieve social justice for indigenous people. Many indigenous people still feel alienated and outcast in this country from the structures and processes of mainstream Australian life.

5.71 As indicated by the Royal Commission's report the underlying causes of over-representation are complex and deep rooted in the historical exclusion and dispossession which has been the lot of indigenous people. By addressing the wider social justice issues in this report much can be done to improve opportunities for Aboriginal and Torres Strait Islander participation and inclusion in Australian life on terms appropriate to their indigenous status.

5.72 Aboriginal and Torres Strait Islander legal services must be a key component in achieving progress in law and justice. The Royal Commission recognised the importance of such culturally appropriate and relevant services. The Government has responded by providing some increase in funding which has resulted in additional professional and field staffing for most organisations and an expansion of services into new locations. There is, however, a demonstrable need for more resources to enable the legal services to meet community demands for improved quality of legal aid services and for related roles such as community legal education. There is no formal national program aimed at community legal education and present arrangements are ad-hoc and unsatisfactory.

5.73 Consultations: In the course of consultations it was clear that Aboriginal and Torres Strait Islanders place a very great importance on ensuring fair and equitable treatment by the criminal justice system. To this end considerable importance was attached to the following:

- the failure of existing State and Territory programs to adequately support preventive, diversionary and rehabilitation schemes;
- the extension, adequate resourcing and improved quality of Aboriginal and Torres Strait Islander legal aid,
- full implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and accountability of agencies responsible for implementation;
- cultural awareness training of court officials, police, members of the judiciary and prison workers;
- an interpreters service for people coming before the courts and for law and justice workers;

- community education on legal rights;
- representation on authorities involved in law reform;
- greater involvement of families and communities in the legal system;
- measures to improve relationships with police, judiciary and prison authorities;
- measures to address the specific policing, custody and judicial needs of indigenous women-the most over-represented group in custody,
- access to police protection for women, adequate legal representation and facilities that offer temporary protection,
- indigenous representation on juries;
- awareness of existing rights (eg to criminal injuries compensation);
- reforms within the prison system to provide for more indigenous staff and better health services;
- greater training and employment of indigenous police and police aides,
- cultural education of police, prison staff and the judiciary, and
- community policing initiatives.

5.74 A number of the legal services made submissions concerning the need for greater resources to address the urgent unmet need for quality representation and to enable indigenous people to exercise their legal rights. In particular greater recognition of the role of legal services was sought in pursuing significant test cases with the capacity to generally improve the legal standing of indigenous peoples.

RECOMMENDATION 70.

The Commonwealth Government make a renewed commitment, supported by an increased emphasis on Specific Purpose Payments to States and Territories, to address the recommendations of the Royal Commission Into Aboriginal Deaths In Custody.

RECOMMENDATION 71.

The Commonwealth Government give urgent consideration to the establishment of a National Aboriginal and Torres Strait Islander Justice Advisory Committee which would have a major role in monitoring evaluation and reporting on implementation of the recommendations of the Royal Commission.

SPORT AND RECREATION

5.75 Sport and recreation programs have great capacity to promote social and physical well being. Sport and recreation are an integral part of Aboriginal and Torres Strait Islander life and serve as an opportunity for cultural survival and revival. As opposed to the aging mainstream population, the Aboriginal and Torres Strait Islander population is predominantly youthful with more than 62% aged 24 years or younger. This

underlying statistic must underpin an accelerated commitment to access and equity in support of indigenous sport.

5.76 Benefits of sport and recreation programs to indigenous communities include:

- a very significant and positive-contribution to long-term health by addressing the lifestyle diseases which are undermining Aboriginal health;
- in particular, a cost effective method to help combat substance abuse, cardiac disease, diabetes, obesity and show considerable impact on mental health disorders;
- an effective element in diversionary schemes for youth aimed at decreasing juvenile contact with the justice system and associated anti-social behaviour, and
- participation improves self esteem, provides a worthwhile motivation for correct nutritional practices and allows for the development of leadership skills.

5.77 Sport often provides the first opportunity for shared experiences between indigenous and non indigenous Australians and for recognition of indigenous achievement. The perceptions gained through either direct experience or the media are powerful tools for reconciliation.

5.78 In keeping with access and equity principles, the higher proportion of indigenous youth, and the demonstrated ability to achieve when given the opportunity, it is imperative that the focus on indigenous sportspersons be immediately strengthened. It is noted, for example, that of the 524 scholarships granted by the Australian Institute of Sport under the AIS Scholarship Scheme in 1994-95, only two were offered to Aboriginal and Torres Strait Islander athletes. Both these talented athletes, Cathy Freeman and Kyle Van de Kuyp, represented Australia at the 1994 Commonwealth Games.

5.79 Currently, there is no national strategy in place to assist development of indigenous sport and recreation. It is important the Australian Sports Commission commence negotiation with indigenous sports representatives and ATSIC to develop an ongoing national development and support program for indigenous sports. Indigenous initiatives to develop a national Aboriginal and Torres Strait Islander Sport and Recreation peak body should be encouraged.

5.80 Consultations: During consultations the following issues were raised:

- the need for support and development programs and facilities for children, youth, adults, and gifted individuals in sport and recreation;
- appropriate resources including sport and recreation officers, facilities, support for local sporting bodies to be provided at local levels, especially in remote areas and indigenous communities;
- recognition of linkages between sport and recreation and healthy communities;
- support for indigenous sporting competitions, particularly in remote areas;
- efforts to be supported by Government to address racism in sport;
- the need for training of indigenous recreation officers and sports administrators,

- establishment of a working party to develop a national policy on indigenous youth and sports; and
- the need to establish an Olympic Games development program.

RECOMMENDATION 72.

The Australian Sports Commission develop a focused access and equity program to foster participation of Indigenous Australians In national sport with particular reference to the underlying disadvantages and youthful composition of the Indigenous population.

RECOMMENDATION 73.

The Commonwealth Government should ensure that In measures to address the housing and infrastructure backlog of Indigenous communities, particular attention Is paid to the provision of adequate sporting and recreation facilities. (See also Recommendation 67)

OTHER PRIORITY AREAS

5.81 While this report cannot comprehensively address all program areas the consultations highlighted several areas which should be the focus of specific attention.

5.82 Aboriginal and Torres Strait Islander women are disadvantaged both as indigenous peoples and because of gender. They generally have the major responsibility for responding to the physical, social and psychological need of a family and community. The status and role of women in community and public Affairs needs to be boosted dramatically. This can be achieved by:

- focussing on and consolidating family units as a priority
- re-evaluating women's role and contribution within Aboriginal and Torres Strait Islander forums
- facilitating the participation of Aboriginal and Torres Strait Islander women in socio-culturally acceptable ways;
- consulting with Aboriginal and Torres Strait Islander women and involving them in the delivery of policies and programs that affect them; and
- reviewing access and equity provisions to ensure Aboriginal and Torres Strait Islander women have equitable access to programs and services

5.83 Issues relating to the social justice package were considered by a working group of indigenous women from 12-14 September 1994. A great majority of the social justice issues were equally applicable to indigenous peoples irrespective of gender. In several areas, however, indigenous women had special perspectives. In overall consideration of rights-based approaches, consideration needed to be given to women's rights. It was considered that within ATSIC and other service delivery agencies indigenous women should be employed to monitor and ensure the rights of women are recognised in Government and non Government program planning and service delivery. It was also considered that a specific policy should be adopted by and for indigenous women within a culturally appropriate framework to underpin the perspective of indigenous women in relation to Government and non-Government programs. The consolidation of the family unit and its enhancement must become a strategic focus for change.

5.84 The consultations indicated that to achieve social justice not only must resources be directed to indigenous Australia, there were also segments within the indigenous population which needed special attention. In particular there was wide spread concern that the indigenous aged, mentally ill and disabled people were especially in need of special programs.

5.85 Additionally the youthful demographic profile of the indigenous society needs to inform all areas of policy but has particular implications for expanded programs dealing with youth, children and the family.

RECOMMENDATION 74.

The Commonwealth Government should ensure that In respect of actions flowing from the recommendations in this Report:

- a. full consideration Is given to the implications of proposed actions for Indigenous women; and
- b. Indigenous women are adequately represented In all forums Involved In developing, or monitoring the Implementation of, these recommendations.

CULTURAL INTEGRITY AND HERITAGE PROTECTION

6.1 In its request to ATSIC for this report, the Government highlighted development and protection of Aboriginal and Torres Strait Islander cultures as an area which it was prepared to address as part of further measures in response to the High Court decision.

6.2 Aboriginal and Torres Strait Islander peoples are increasingly insisting that the full range of their cultural and intellectual property rights be acknowledged and protected. These rights address the preservation and care, protection, management and control by indigenous peoples of their cultural artefacts, human remains, archaeological, historical and significant traditional sites, traditional food resources and traditional and contemporary cultural expressions. They include rights to the understanding and knowledge Of, and the ideas contained in culture and in many forms of cultural expression such as rituals, legends and designs.

6.3 ATSIC's approach to culture and heritage is grounded in the principle of self determination. Rights of ownership, control over management of the various expressions of cultural heritage, and financial returns which may flow from use of cultural or intellectual property should be in the hands of those to whom the culture belongs.

6.4 Aboriginal and Torres Strait Islander people want stronger measures to recognise, protect, maintain and revitalize all aspects of their culture and heritage. They want the diversity of their cultures clearly acknowledged and respected. They want the position of traditional custodians of those cultures recognised, protected and reinforced.

6.5 In the *National Commitment* all Governments agreed to 'empower Aboriginal peoples and Torres Strait Islanders to protect, preserve and promote their cultures and heritage, recognising that their unique cultures are Australia's indigenous heritage". This perspective, however, remains poorly and only indirectly represented in Commonwealth legislation relevant to Aboriginal and Torres Stra123it Islander culture and heritage. Neither, with one or two exceptions, is it recognised in State and Territory legislation.

PROTECTION OF CULTURALLY SIGNIFICANT AREAS AND SITES

6.6 Aboriginal and Torres Strait Islander heritage is intrinsically related to particular areas of land and water. For more than two decades there has been legislation at a State and Territory level relating to the ownership, management and control of areas of land considered culturally significant to Aboriginal and Torres Strait Islander peoples and of the material evidence, usually archaeological, of occupation.

6.7 Much of this legislation, originally enacted during the late 60s and early 70s, was premised on the concept of the Crown as owner and custodian of the cultural heritage of the nation. Continuing rights and interests over the land and associated material evidence of occupation (usually referred to as 'relics') were therefore guaranteed to Governments. Protecting the living relationship of indigenous people with their heritage was largely ignored.

6.8 Despite a long history of inquiries at State level, particularly in NSW, Victoria and WA, reform of indigenous heritage legislation has been disappointing. Much legislation provides only passive and non interventionist protection of places and sites and offers considerable latitude for other factors, particularly economic interests, to be accorded priority over indigenous cultural interests. The concept of State ownership and control still prevails and much current legislation still reflects this dated concept.

6.9 Other concepts of heritage legislation simply do not accord with indigenous cultural values. For example in registering and/or declaring an area significance is given in some legislation to the issue of relative importance of an area or site. Yet in Aboriginal and Torres Strait Islander society the issues of significance and cultural importance are settled not by objective and global references, but by reference to traditional law and custom or, in contemporary situations, by a largely consensus judgement influenced by the views of elders in the community.

6.10 Of particular concern is the lack of involvement and empowerment of indigenous people in decision-making and control of places and sites of cultural significance. This issue was widely regarded by the Royal Commission into Aboriginal Deaths in Custody as a key factor in the experience of cultural dispossession.

6.11 **Indigenous Management and Control:** Some current legislation seeks to provide for greater recognition of indigenous interests. However arrangements still fall far short of what indigenous people regard as adequate protection of their inherent rights.

6.12 In the NT the *Aboriginal Sacred Sites Act 1989* provides a substantial role for the Aboriginal Areas Protection Authority (AAPA), a statutory body comprising Aboriginal membership. Notwithstanding this, however, there remain provisions to overturn actions of the AAPA through the exercise of Ministerial discretion.

6.13 In **Victoria** there is some semblance of local Aboriginal management Of sites, under Part IIA of the Commonwealth's Aboriginal and Torres Strait Islander Heritage Protection Act 1984. This occurs principally through the appointment, under delegation of the State Minister, of local inspectors. Nonetheless there is no question of Aboriginal ownership or control over access to those sites.

6.14 In South Australia, the Aboriginal Heritage Act 1988 provides for State and Regional Heritage Committees which must be consulted by the State Minister before he exercises discretions under the Act. The recent history of conflicts in which the

Commonwealth has been asked to intervene (particularly over Iron Princess and Hindmarsh Island Bridge) suggest that Aboriginal powers over the decision-making over sites may be purely notional.

6.15 There is little or no provision for Aboriginal management and control over sites in New South Wales, Queensland, Western Australia, Tasmania or the ACT.

6.16 **A Safety Net?** At the Commonwealth level, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 was enacted to complement State and Territory laws. It was intended to be used as a last resort where State and Territory laws are considered not to provide effective protection of significant areas and objects from injury or desecration, or where there is an unwillingness to invoke those laws for the benefit of Aboriginal and Torres Strait Islander peoples.

6.17 Significantly, in this instance, the Commonwealth has moved to ensure where there is a conflict of interests that, subject to Cabinet consent, the Minister for Aboriginal and Torres Strait Islander Affairs is able to assert primacy to the interests of indigenous peoples. However the Commonwealth law has its own weaknesses and deficiencies.

6.18 The Heritage Act involves mediation processes to resolve situations of threat or conflict on behalf of Aboriginal or Torres Strait Islander peoples whose heritage is under threat. Where mediation and negotiations fail, a declaration may be used to preserve and protect the place, area or object for a specified period.

6.19 The Act, however is not intended to be used to grant permanent forms of protection, or to transfer title to the Crown or to Aboriginal and Torres Strait Islander applicants, other than in certain circumstances where the objects in question are Aboriginal or Torres Strait Islander skeletal remains.

6.20 **Need for Strengthened Legislation:** An essential element of social justice measures should be to strengthen Commonwealth heritage legislation and to set a model whose underlying principles would need to be matched in equivalent State/Territory legislation. Where particular parameters are not met, Aboriginal and Torres Strait Islander people should be able to seek a decision under Commonwealth legislation without having first to employ deficient State/Territory legislation. Some key issues to be addressed include:

- an independent assessment process;
- more inclusive and consistent definition of significant Aboriginal areas, places and sites;
- incentives to complete deliberations and determinations relating to protection of threatened areas and sites within realistic time frames;
- powers to transfer responsibility for the management and control of significant areas and places to the Aboriginal and Torres Strait Islander community/custodians and guardians;
- adequate penalties for offences committed in relation to significant areas and places and power for indigenous people concerned with those areas and places to invoke respective penalty clauses whenever an offence occurs;
- strengthening requirements for Governments to consult directly with indigenous people affected or potentially affected by any planning or heritage application; and

- better coordination and resourcing of heritage identification and management.

6.21 **Consultations:** During consultations a range of matters were highlighted as requiring action, particularly by the Commonwealth Government. These included:

- review and strengthening of State legislation;
- restoration and preservation programs for significant sites,
- adequate legal protection including penalty provisions;
- need for secure title and access to sacred sites under the control of local communities;
- indigenous control of sacred site protection legislation;
- local indigenous community to be notified and consulted when sites are discovered;
- indigenous employment as rangers/custodians of National Parks;
- a public awareness campaign to explain indigenous values;
- indigenous processes to define site boundaries; and
- cultural impact assessment to accompany development proposals.

PROTECTION OF MOVABLE CULTURAL PROPERTY

6.22 The issues of ownership and control by Aboriginal and Torres Strait Islander peoples of movable cultural material or property featured prominently in consultations undertaken in relation to this report. Of particular concern was the issue of significant indigenous cultural material held by institutions both in Australia and overseas.

6.23 Under Australian law museums own those items that they have acquired legally and can largely deal with them as they see fit consistent with their enabling legislation. At the same time Aboriginal and Torres Strait Islander people hold strong views on their continuing rights to cultural material representing their cultural heritage. These views have in the past and, in some instances, continue to conflict with those of collecting institutions.

6.24 A number of larger well established museums have made significant progress in developing relations with the Aboriginal and Torres Strait Islander community. In some areas, notably in respect of skeletal remains and items of secret/sacred material, the concerns of Aboriginal and Torres Strait Islander communities have been given serious attention. In a number of instances claims for return of this type of material have been properly resolved.

6.25 Council of Australian Museum Associations (CAMA) policy now sets out principles which seek to guide Australian museums in development of their individual policies in respect of Aboriginal and Torres Strait Islander peoples. The policy treats such areas as indigenous involvement in collection and information management, involvement in public education programs, access to collections and information, professional assistance to communities in management of cultural material, employment and training of indigenous people and involvement in policy formulation.

6.26 ATSIIC has welcomed this development and the essential good will it expresses on behalf of the museum community. The principles of the document broadly parallel the direction of ATSIIC policy. However many Aboriginal and Torres Strait Islander people are disappointed that it falls short of an unequivocal acceptance of what they regard as their cultural property rights.

6.27 In mid 1993 ATSIIC adopted a policy designed to underpin development of a national policy on the protection and return of significant cultural property to Aboriginal and Torres Strait Islander peoples. An important goal of the policy was to restore cultural ownership rights to those Aboriginal and Torres Strait Islander people whose cultural obligations and rights in relation to particular cultural property held by collecting institutions could be identified and confirmed by the relevant community.

6.28 These cultural ownership rights encompass the right to make decisions concerning the protection, care and, where desired, the return of that cultural property to the possession of the relevant community. Classes of significant cultural material highlighted in this national policy are:

- human skeletal remains, tissue material and burial artefacts;
- significant objects of religious and cultural property, in accord with Aboriginal and Torres Strait Islander tradition; and
- cultural objects which are of particular historical significance to Aboriginal and Torres Strait Islander peoples.

6.29 It is noted that the December 1990 meeting of the Australian Aboriginal Affairs Council resolved that Aboriginal and Torres Strait Islander peoples should be given the above rights.

6.30 The policy sought the acceptance by Governments of the responsibility to take appropriate and culturally sensitive action to ensure identification and recognition by collecting institutions of the cultural ownership obligations of indigenous peoples in respect to the cultural material in their collections. ATSIIC and the Minister for Aboriginal and Torres Strait Islander Affairs sought adoption of this national policy through the Australian Aboriginal Affairs Council in October 1993. In the event, political issues, particularly State rights, prevented agreement.

6.31 ATSIIC believes that, notwithstanding the complexity of resolving competing interests over management and control of cultural property, the Commonwealth Government should seek to conclude formal agreement with the States and Territories of a comprehensive national policy on protection and return of cultural material. It should also ensure that such national policy principles are adopted in its own institutions.

6.32 Part and parcel of this approach would be the provision of increased resourcing by the Commonwealth and State/Territory Governments to appropriate identification of traditional custodians, measures to accelerate employment and training of indigenous staff in public museums, measures to enhance community participation in public museum programs, and support for the establishment of local indigenous keeping places and cultural centres.

6.33 Consultations During consultation a range of issues were highlighted as requiring Government action:

- measures to establish regional and local keeping places to house cultural items;
- measures to ensure return of cultural property including objects and significant art from overseas and from within Australia,
- measures to recognise localised community ownership and return of human remains; and
- adequate penalties for removal or desecration of cultural property.

PROTECTION OF INTELLECTUAL PROPERTY

6.34 Discussion of intellectual property issues during consultations covered a range of areas. People were concerned with the protection of their individual intellectual property rights as artists, authors and designers. They were also concerned about protecting what were seen as communal intellectual property rights. These might include such things as the images expressed in cave art, weaving techniques and forms of technology, traditional designs and motifs, forms of ceremonial practice or traditional knowledge flora and fauna, conservation techniques or traditional medicine.

6.35 The general lack of recognition and protection under Australian law for the broad range of intellectual cultural property of indigenous people has been a matter of concern for over twenty years. A number of studies have been conducted over the years mainly concentrating on the protection of artists and forms of cultural expression. Recommendations have been made for reform but little has been done to implement those recommendations.

- In 1973 a National Seminar on Aboriginal Arts held to coincide with establishment of the Aboriginal Arts Board passed resolutions that sought procedures to enable Aboriginal groups to protect and control the use of their own particular works and designs and to strictly control use of them by non indigenous people.
- In 1981 a Working Party on the Protection of Aboriginal Folklore, established by the Government, concluded that existing legislation did not in general provide an assurance of legal protection for Aboriginal artists drawing upon their traditions. The Working Party recommended special legislation, amendments to the Copyright Act and establishment of an administrative framework to protect and regulate non-customary use of items of Aboriginal cultural expression.
- In 1988 a review of the Aboriginal Arts and Crafts Industry drew attention to the inadequacy of existing copyright legislation and proposed moral rights legislation to protect other than certain individual rights of indigenous artists. The review emphasised the fundamental gulf that exists between copyright and customary law and practice and supported a re-examination of the whole area with a view to affording indigenous artists and their communities additional legislative safeguards over the integrity of their cultural expression.

6.36 In the Government's *Creative Nation* statement, the Prime Minister has acknowledged that reconciliation with Australia's indigenous peoples demands recognition of the shortcomings in current protection for Aboriginal and Torres Strait Islander arts and cultural expression. The Attorney-General's Department has recently commenced a new examination of the limitations of the law and seeks to address issues that affect the intellectual property protection of Aboriginal arts and cultural expression.

An Issues Paper has been released inviting comment from the Aboriginal and Torres Strait Islander community.

6.37 Among legislative options outlined by the Attorney-General's Department are:

- amendments to the Copyright Act,
- amendments to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984; and
- special legislation.

6.38 **Consultations:** During consultations a range of issues were discussed. Matters of particular importance raised included:

- new or revised national legislation to protect rights in, access to and control of, intellectual property,
- recognition of communal rights including perpetual rights;
- development of a code of ethics in observing and protecting all forms of copyright;
- legal enforcement of rights;
- protection against imitators, unauthorised use, profit making by non-indigenous peoples;
- awareness programs;
- regional and community control of intellectual property,
- sharing of commercial gain arising from the exploitation of flora and fauna,
- restrictions on importation or manufacture of indigenous imitations;
- a national 'mark' to identify items of indigenous creativity, and
- resale royalties for cultural property.

RECOMMENDATION 75.

Government policy and legislation relevant to the ownership and protection of culturally significant places, areas and objects for Aboriginal and Torres Strait Islander peoples should:

- a. ensure Indigenous control of the protection, preservation and promotion of their cultures and heritage; and
- b. recognise that these unique cultures are Australia's Indigenous heritage.

RECOMMENDATION 76.

The Commonwealth Government must adopt a national policy for protection and return of significant cultural property for Commonwealth Institutions and ensure that similar policies are applied in States and Territories.

RECOMMENDATION 77.

The national policy should encompass:

- a. human skeletal remains, tissue material and burial artefacts
- b. significant objects of religious and cultural property In accord with Aboriginal and Torres Strait Islander traditions; and
- c. cultural objects which are of particular significance to Aboriginal and Torres Strait Islander peoples.

RECOMMENDATION 78.

The Commonwealth Government should adopt policies and strategies to encourage and promote, within its own agencies and within State and Territory agencies, Aboriginal and Torres Strait Islander management and control over decision-making In all areas responsible for Aboriginal and Torres Strait Islander heritage protection.

RECOMMENDATION 79.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 should be amended Immediately to provide protection for sites, places and objects during conciliation and consultation procedures.

RECOMMENDATION 80.

The Commonwealth Government should proceed to establish minimum benchmarks for heritage legislation and Incorporate these In now legislation for protection of significant sites. The legislation should provide the option for Aboriginal and Torres Strait Islander people to Invoke Commonwealth provisions where State/Territory legislation does not meet such minimum standards. The legislation should provide for:

- a. protection for Indigenous sites and areas during conciliation and consultation procedures;
- b. requirements for Governments to consult directly with Indigenous people affected or potentially affected by any planning or heritage application;
- c. adequate penalties for offences committed in relation to significant areas and places and power for Indigenous people concerned with those areas and places to Invoke respective penalty clauses whenever an offence occurs;
- d. a more comprehensive definition of significant Aboriginal and Torres Strait Islander areas, places and sites which gives due emphasis to the contemporary cultural values of the local Indigenous community, and
- e. establishment of a National Indigenous Heritage and Sites Authority to administer Commonwealth heritage legislation and to provide for an Independent process of assessment.

RECOMMENDATION 81.

The Commonwealth Government should amend statutes relevant to Intellectual property rights to safeguard the Integrity and ownership of Indigenous cultural property in a manner which recognises the particular features of Aboriginal and Torres Strait Islander ownership, including perpetual and communal rights.

RECOMMENDATION 82.

The Commonwealth Government should introduce measures to regulate and ensure appropriate compensation for agreed use of Indigenous Intellectual and cultural property.

RECOMMENDATION 83.

The Commonwealth Government must ensure that ATSIC and appropriate Indigenous organisations are fully involved in negotiating the legislative reform and other aspects of the recommendations relating to cultural protection.

RECOGNITION OF CUSTOMARY LAW

"We got the Law from the old people and we still got it today. We have never forgotten about our Law. We still run it, the old people. Wherever we go with our song-north, south, east or west-we still reach our country, our culture" (Hitler Bamba in a submission from the Kimberley Aboriginal Law and Culture Centre)

6.39 Customary law is an integral and central part of Aboriginal and Torres Strait Islander culture and identity. In many parts of Australia, Aboriginal and Torres Strait Islander peoples are bound by customary systems of legal, social and religious rules and obligations which govern relationships between themselves and with their land.

6.40 In general customary law is not recognised as a source of Australian law. In many instances conflicts arise between the practice of customary law and common law, statute law, legislative regulations and procedures.

6.41 A most significant aspect of the High Court decision on native title is the recognition of indigenous customary law as a source of law in respect of title to land. Apart from the applicability of this judgement, however, there has been no general or comprehensive recognition of customary law by the Commonwealth or the States/Territories.

6.42 In Australia, the only example of a form of general recognition of customary law does not apply to indigenous customary law-Section 18 of the *Cocos (Keeling) Islands Act 1955* provides that the institutions, customs and usages of the islands' Malay residents shall, subject to any law in force in the Territory from time to time, be permitted to continue in existence.

6.42 While there is some accommodation of customary law within Commonwealth and State Territory jurisdictions, implementation of the ALRC report has been slow and piecemeal. ATSIC is particularly concerned at a tendency to try to accommodate recommendations of the Report under general provisions of law rather than legislate specifically, or to allow recognition to occur through the Common Law process.

6.43 The latter approach in particular leads to ad hoc and uneven outcomes, and shifts a proper responsibility of Governments onto the judiciary. Further, the process is slow and dependent on cases being brought to court-particularly defended cases. Thus there is the danger of relatively trivial issues being resolved while highly significant matters are not even addressed.

6.44 Specific and proactive reform is necessary to ensure justice for Aboriginal and Torres Strait Islander peoples, including, wherever appropriate, specific recognition of customary law, and the enforceability of rights that those laws assert.

AUSTRALIAN LAW REFORM COMMISSION REPORT

6.45 The Australian Law Reform Commission (ALRC) conducted an extensive inquiry into the recognition of Aboriginal customary law during the late 1970s and 1980s. Its Report, *Recognition of Aboriginal Customary Law*, was published in 1986.

6.46 While the 1977 reference to the ALRC included only Aboriginal customary law, the ALRC recognised that some of its recommendations were relevant to Torres Strait Islanders. ATSIC believes any consideration of the report's recommendations must be inclusive of Torres Strait Islander customary law. Clearly any contemporary reference to the ALRC would include customary law for all indigenous Australians.

6.47 The ALRC noted in its report that 'although Aboriginal customary laws and traditions have been recognised in some cases and for some purposes by courts and in legislation, this recognition has, on the whole, been exceptional, uncoordinated and incomplete'.

6.48 The ALRC recommended a functional approach which would maintain flexibility and deal with particular matters of conflict between customary law and the general Australian system on an issue by issue basis. Specific recommendations for recognition of aspects of customary law were made in respect of-

- marriage and family matters;
- distribution of property,
- the criminal law (including policing, interrogation, evidence and sentencing)
- local justice mechanisms for Aboriginal communities; and
- hunting, fishing and gathering rights.

6.49 The ALRC took the view that creation of new and separate legal structures should in general be avoided. Importantly, however, it indicated such new structures should be supported where there was a clearly demonstrated need.

6.50 Response to the ALRC Report: ATSIC is concerned that some eight years after the ALRC Report there has been no comprehensive response from Government or coordinated approach to implementation of the ALRC recommendations. While a number of the ALRC recommendations have been accommodated developments have been largely ad hoc and piecemeal.

6.51 Recommendation 219 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) noted that the ALRC Report was a significant, well researched study and that many requests were received during the course of the Royal Commission for indigenous people regarding the progress of its implementation. The Royal Commission urged the Government to report on this matter.

6.52 At the time of preparing this report, the Department of Prime Minister and Cabinet had prepared a progress report on implementation of the ALRCs recommendations to be incorporated into the 1993-94 Annual Report on Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission. A meeting of Commonwealth and State Attorneys-General has also agreed that such reports should be prepared in respect of progress in State and Territory jurisdictions.

6.53 It is of concern to ATSIC that the Commonwealth Attorney-General's Department continues to express reservations about specific legislative recognition of the customary laws or practices of any one group. As a general approach the Department states it "has sought to provide general and non-discriminatory recognition which is capable of encompassing the laws and customs of all minority groups where the opportunity has risen..... There is no recognition that the position of indigenous peoples is different to other groups who make up our multicultural society.

6.54 These issue of special provisions in respect of indigenous customary law was addressed directly in the ALRC report. ATSIC supports the report's view that indigenous peoples in Australia are in a unique legal position which is discriminatory, and quite fundamentally unlike that of immigrant groups whose members could exercise choice in subjecting themselves to the existing Australian legal system.

6.55 **Indigenous Rights and Customary Law:** Aboriginal and Torres Strait Islander people have a special status as indigenous peoples. This distinction and the recognition of aspects of indigenous customary law have long been recognised in comparable countries such as United States and Canada. The right of indigenous people to have customary law accommodated within the laws of the state in which they live is increasingly recognised in international instruments and in developing work by the United Nations. For example:

- Article 8 of ILO Convention 169 states that in applying national laws and regulations to indigenous peoples due regard shall be had to their customs or customary laws and that they should have the right to retain their own customs and institutions, where these are not incompatible with other fundamental rights defined by the national legal system and with internationally recognised human rights. At the same time such provisions should not prevent individuals from exercising the rights granted to all citizens and from assuming their corresponding citizenship duties.
- Article 33 of the Draft Declaration on the Rights of Indigenous Peoples asserts that indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinct juridical customs, traditions, procedures and practices, in accordance with internationally recognised human rights standards.

6.56 **Need for renewed action by Governments:** It is ironic that the most significant development in recognition of customary law has not come through response by Governments to the ALRCs report but through a determination in common law. The High Court decision on native title simply recognised in common law the legal force of customary law and practice in respect of indigenous rights to land where those rights continued to be asserted and where they had not been extinguished by legitimate actions by Governments. The legislative response to the decision, however, remains ultimately conservative. The Native Title Act 1994 essentially adds nothing that is not now recognised in common law.

6.57 It is believed that the examination of customary law and process of implementing recommendations of the ALRC Report should be reinvigorated in the light of the Mabo decision and as part of the Social Justice Package. The social justice response presents

an opportunity to complement the Native Title Act with measures which can lead to more comprehensive recognition of customary law. The Government must take afresh at implementing recommendations of the ALRC Report at the Commonwealth level and seek a renewed commitment from State and Territory Governments to do likewise within their jurisdictions.

6.58 In a recent address to the *Justice Forum*, the Minister for Aboriginal and Torres Strait Islander Affairs posed the question of whether it would be left to the courts again to evolve respect and acceptance of indigenous customary law in a wider sphere. The Minister suggested that it should not and that Governments should act now to give effect to indigenous customary law. The Minister put forward the following proposition for consideration by all Governments:

Aboriginal and Torres Strait Islander customary law shall be recognised and applied to the extent that it continues to be traditionally practiced by indigenous people provided that such application by the courts shall be reasonable and in accordance with Australia's international obligations.

6.69 **Consultations:** During consultations there was wide spread support for measures to achieve legal recognition, protection and promotion of customary law observance, and indigenous peoples' rights to practice customary law. In particular indigenous people have sought:

- implementation of the Australian Law Reform Commission's recommendations on customary law, taking into account findings of the Royal Commission in Aboriginal Deaths in Custody,
- review of existing legislation to ensure customary law is accommodated wherever appropriate;
- customary law as a feature of any self- Government arrangements;
- respect for traditional power structures;
- provision for customary obligations to be recognised in industrial agreements;
- recognition of traditional hunting, gathering and fishing rights on traditional lands and waters in Commonwealth legislation;
- judicial education; and
- measures to reinforce customary law.

RECOMMENDATION 84.

The Commonwealth Government should ensure that effective processes are put in place for addressing the recommendations of the Australian Law Reform Commission Report on Customary Law Reform which would include:

- a. oversight by a committee comprising the Minister for Aboriginal and Torres Strait Islander Affairs, the Attorney-General and the Chairperson of ATSIC; and
- b. extensive consultations with traditional law men and women.

INDIGENOUS PEOPLES AND THE ENVIRONMENT

"The ability to provide social justice for Aboriginal people will depend on the extent to which the unique relationship between Aboriginal people and their land is understood in the contemporary context" Central Land Council submission.

6.60 As indigenous peoples, Aboriginal and Torres Strait Islander people have a particular interest in the management and well-being of their environment.

6.61 In its submission the Central Land Council stressed the connection between contemporary land management and customary law and usage. 'Aboriginal aspirations and perceptions of land management issues are strongly influenced by responsibilities and rights contained within Aboriginal law(s) ... which control action on the land and which set the parameters for management practices and the acceptance of new ideas.'

6.62 The special connection of indigenous people and their land is also underlined in the High Court decision on native title where it is acknowledged that native title derives from indigenous people's connection with and occupation of the land (or sea) in accordance with traditional laws, customs and usages. By implication indigenous peoples are recognised as stewards and guardians to the land and sea.

6.63 The special responsibilities that indigenous people maintain in connection with the environment are increasingly being recognised internationally. At the Earth Summit in Rio de Janeiro in June 1992 Australia signed two documents with particular significance to Aboriginal and Torres Strait Islander peoples: *Agenda 21*, and the *Convention on Biological Diversity*, both of which recognise the particular knowledge, interests and roles of indigenous peoples in relation to the environment.

6.64 ATSIC's own environment policy seeks:

- equitable participation and contribute to the development of and implementation of environmental policies at all levels of Government;
- preservation of native title rights;
- empowerment and capacity to care for the range of environments in which indigenous people live and have interest;
- protection of the natural and man-made environments, and
- information rights.

6.65 Particular issues requiring the attention of Government which were raised during consultations and addressed in submissions are discussed below.

6.66 **Indigenous involvement in public management of land and resources:** Indigenous people must participate in environmental decision-making at all levels of Government. Management would benefit from indigenous cultural insights and values and the use of indigenous land management techniques. Utilisation of indigenous knowledge of the environment and its flora and fauna is seen as fundamental to the preservation of biodiversity.

6.67 **The legacy of non indigenous land use:** Much Aboriginal community land, acquired through land rights legislation or purchased, suffers the past effects of inappropriate land use and management, particularly in arid, semi arid and coastal areas.

Aboriginal communities must be able to access resources to address land management and needs arising from degradation of community land.

6.68 **Preservation of traditional land use rights:** There must be recognition that traditional land use rights such as hunting, fishing and gathering, or use of land for cultural activities such as ceremonies or maintenance of sites, are able to coincide responsibly with other land uses desired by the community for economic or other reasons.

6.69 **Wildlife conservation:** Indigenous peoples should be involved in research programs, joint management schemes and strategies for protection of endangered species. Control and eradication of pest plants and animals should be carried out with the involvement, consent and control of land-owning communities.

6.70 **Inland waters:** There is a need for the Government to support research and development of environmentally and culturally acceptable water and waste systems. Indigenous people must participate in catchment management of both community lands and other lands in which groups have interest.

6.71 **Coastal zone management:** Indigenous peoples are major stake holders in Australia's coastal zone and have a major interest in its management and in the use of its resources. Provision must be made for indigenous coastal communities to participate meaningfully in decisionmaking at the local, State and Commonwealth level.

6.72 **Forests:** Indigenous peoples have a range of interests in the management of forested areas. These include issues relating to protection of the land and areas of significance, the use of forest resources for traditional products and contemporary development, and employment. Indigenous interests must be represented in Government decisionmaking relating to forest management.

6.73 **Tourism:** The development of cultural tourism and ecotourism has important implications for indigenous people. Unconsidered development can impact negatively upon natural areas, sites of significance and indigenous lifestyle. At the same time it can offer opportunities for indigenous economic development and employment. To date indigenous peoples have played a minor role in policy development and industry participation despite the marketing of mainstream tourism often around Aboriginal and Torres Strait Islander cultural experiences.

6.74 **Mining:** Mining and mineral exploration can have positive or negative outcomes for indigenous peoples. Mining related activities may be damaging to the environment and lead to unwelcome intrusions into community life. At the same time there is the opportunity to increase independence through income from joint ventures, royalty equivalents or employment. Indigenous people wish to explore the possibilities with mining interests. If there is to be any equity in negotiations with powerful mining companies, however, it is imperative that indigenous people have the right to decide if mining activities are to occur on their lands.

6.76 **National Parks and Heritage Areas:** Uluru and Kakadu National Parks demonstrate the benefits of co-management agreements of National Parks and Heritage areas where indigenous perceptions and management knowledge are incorporated in conservation management. Indigenous peoples should have the right to be involved in the management of national parks and heritage areas where they have an interest. Land grants involving joint management lease-back arrangements should be encouraged only where the terms of such agreements are negotiated freely with indigenous communities and there is no significant loss of indigenous rights.

RECOMMENDATION 85.

The Commonwealth Government support the participation of indigenous peoples In the full range of environmental decision-making and planning processes at all level of Government. Indigenous people should be represented on decision-making bodies at the Commonwealth level or where the Commonwealth has a partnership role. Similar representation should be encouraged at the State/Territory and Local Government level.

RECOMMENDATION 86.

The Commonwealth Government should adopt a national policy of Indigenous ownership of national parks, and use all means at Its disposal to ensure Its Implementation.

RECOMMENDATION 87.

The Commonwealth Government should review all relevant environmental legislation and procedures with a view to ensuring provision for consultation and negotiation with Indigenous community Interests In matters Impacting on the environment and should provide for adoption of minimum standards.

RECOMMENDATION 88.

The Commonwealth Government adapt LANDCARE to make It more accessible and appropriate for the needs of indigenous community land holders. Additional resources targeted for Indigenous land care and management should be provided direct to community resource organisations.

RECOMMENDATION 89.

The Commonwealth Government should support an education and Information program to promote awareness of the range of Issues associated with Aboriginal land management.

RECOMMENDATION 90.

The Commonwealth Government legislate to provide for traditional access rights for Aboriginal and Torres Strait Islander peoples to public lands and waterways and for exemptions to be granted from any levies or fees normally applying to access or use.

ABORIGINAL AND TORRES STRAIT ISLANDER LANGUAGES

"Language is very, very important no matter what race or creed of people you come from. If you can't speak your tribal language or Creole, then you would not have a chance of knowing your culture". (Dennis Getawan, Chairperson, Umagico Community Council)

6.76 Measures to protect and foster indigenous cultures must include language. For Aboriginal and Torres Strait Islander people, whether they speak Aboriginal English, Creole, or a traditional language, language is an integral part of cultural identity.

6.77 Language retention has important benefits for indigenous communities in terms of self esteem, preservation of cultural identity and greater community cohesion.

Community consultations emphasised that the right to maintain, revitalise or revive languages was fundamental.

6.78 There is a particular need for the introduction of measures to promote and support the maintenance and revival of traditional language use in contemporary contexts. Aboriginal and Torres Strait Islander people want, through their own research and efforts, to return their languages and related information to their communities.

6.79 The value of maintaining and reviving indigenous languages has been emphasised in many different contexts by Aboriginal and Torres Strait Islander people and is discussed in the Royal Commission into Aboriginal Deaths in Custody report (see also recommendation 55) and in two recent Parliamentary Committee reports; *Language and Culture-A Matter of Survival* (1992) and *Access and Equity-Rhetoric or Reality?* (1993).

6.80 An awareness of the importance of language and literacy issues has increased over the last decade with national policies, such as the Australian Language and Literacy Policy (ALLP), promoting improved language and literacy skills and recognition of the language needs of different communities within Australia.

6.81 However, while there has been an increased willingness to support and promote languages which are seen as of economic benefit to Australia, there has not been the same level of funding, or the same breadth of policy initiatives, from State/Territory or Commonwealth Government agencies for indigenous languages..

6.82 The level of Commonwealth support to indigenous languages mainly under the Aboriginal Education Strategic Initiatives Program (AESIP) through the Aboriginal Literacy Strategy and the Aboriginal Language Education Strategy-is inadequate for the task involved and too narrowly focussed.

6.83 There is a need for greater co-ordination at the national level and for the provision of technical information and advice to community language programs. It is desirable that a national advisory body be resourced to play a role in this area.

6.84 Government policies should take into consideration the variation in the needs of indigenous people and the state of languages in different communities. Increased resources provided on a long term basis are required including for programs aimed at providing support for community based language initiatives. Funding should also be directed at adequately housing and equipping language centres to cater for community demands.

6.85 At the same time Aboriginal and Torres Strait Islander people want indigenous languages and culture included as a mandatory part of education curricula. In appropriate areas, where schools have a significant number of Aboriginal and/or Torres Strait Islander students, bilingual or two way education should be offered as a matter of course.

6.86 Provision of interpreter and translation services in Aboriginal and Torres Strait Islander languages is another important area which needs to be addressed. During consultations, interpreter services were seen as critical to access and equity in the provision of a range of Government and non-Government services including health, education, social security and justice.

6.87 There is currently no formal interpreting and translating service for indigenous languages which can be accessed in a routine way. While Department of Immigration and Ethnic Affairs funds interpreting and translating services for a range of community

languages, these do not cover Aboriginal or Torres Strait Islander languages. Available interpretation services are limited to ad hoc arrangements provided by community language centres, employment of indigenous language speakers by particular agencies or under-resourced services such as that offered by the Institute for Aboriginal Development (IAD).

6.88 In addition to access and equity considerations, the availability of an adequate interpreting and translating service would contribute to language and cultural maintenance by improving the status and utility of traditional languages for their users. Such services could also provide culturally relevant employment opportunities for many Aboriginal and Torres Strait Islander people living in rural and remote areas.

RECOMMENDATION 91.

The Commonwealth Government should acknowledge the right of Indigenous peoples to be heard and receive Information and be educated In their own languages.

RECOMMENDATION 92.

The Commonwealth Government ensure State and Territory Governments implement Aboriginal and Torres Strait Islander language programs which are agreed to by the local community at early childhood, primary, secondary and tertiary levels.

RECOMMENDATION 93.

The Commonwealth Government expand support for community language maintenance and retrieval Initiatives.

RECOMMENDATION 94.

The Commonwealth Government should commit Itself to the provision of an adequate Indigenous language Interpreting and translating service with a particular emphasis In ensuring effective communication within the criminal justice system. Consideration should be given to ensuring Aboriginal management, control and employment as well as other related policy Issues In the area of training and accreditation.

MEDIA AND COMMUNICATIONS

6.89 The establishment of a viable broadcasting and communications infrastructure is a vital element in the promotion and protection of Aboriginal and Torres Strait Islander cultural identities, and in ensuring equitable access of indigenous peoples to culturally appropriate media and communications services.

6.90 As a general rule the mainstream media has not served indigenous people well in terms of representation or in providing culturally relevant services. The Royal Commission into Aboriginal Deaths in Custody highlighted the following indigenous media issues:

- frequent misrepresentation and sensationalisation of indigenous issues;
- swamping of local cultures with non indigenous content and values;
- the importance of an indigenous voice in the media, and

- the need for culturally relevant alternatives to mainstream services.

6.91 Cultural Restoration, Preservation and Growth- The introduction of indigenous broadcasting facilities such as the Broadcasting for Remote Aboriginal Communities Scheme (BRACS) and regional community broadcasting services have demonstrated their worth to the social and cultural welfare of Aboriginal and Torres Strait Islander peoples in those communities that they serve.

6.92 Aboriginal and Torres Strait Islander controlled broadcasting and communications services provide Aboriginal and Torres Strait Islander peoples with the means to:

- recognise and preserve their languages as important means of communications;
- produce linguistically and culturally relevant programs;
- reinforce and promote their cultural identities through, for example, recording of oral histories and ceremonial activities;
- disseminate Aboriginal and Torres Strait Islander news and current affairs;
- foster general community awareness of their cultures through production of material for use by mainstream media;
- enhance self image; and
- allow cost effective access to distance education programs, to tele-medicine and to other innovative programs, such as community-based parole schemes.

6.93 **Consultations:** Consultations highlighted the need for the mainstream media to be more sensitive to issues in indigenous affairs. There were also calls for the strengthening of Aboriginal and Torres Strait Islander-controlled media. Apart from its contribution to promoting cultural identity it was thought that an indigenous media had a particular role to play in public education and awareness programs.

6.94 Submissions to the Advisory Committee highlighted two related media and communications initiatives.

6.95 **A National Radio Network:** The National Indigenous Media Association of Australia (NIMAA) has leased a satellite channel since July 1994 which has capacity to deliver national radio and news services to regional Aboriginal and Torres Strait Islander community radio stations and over 90 non-indigenous community radio stations.

6.96 **A National Remote Area Broadband Video-conferencing Network:** A detailed submission on a proposed national video conferencing network was submitted by Tanami Network Pty Ltd on behalf of 60 remote Aboriginal and Torres Strait Islander communities.

6.97 The proposed National Remote Area Broadband Network would be capable of carrying video-conferencing and other services, such as electronic banking and access to agency databases. Benefits for the Aboriginal and Torres Strait Islander communities include:

- Aboriginal and Torres Strait Islander control over the development of their communications media leads to increased effectiveness of them;
- improved medium for social and ceremonial communication and for communication with service providers-increased self-determination opportunities;
- increased (post-primary) education and training access and opportunities;
- increased employment opportunities (both on Network and indirectly); and
- improved continuity of contact with health, social welfare and legal service providers.

RECOMMENDATION 95.

The Commonwealth Government should expand opportunities by ensuring an equitable distribution of resources within mainstream communication appropriations for:

- a. Aboriginal and Torres Strait Islander participation in mainstream broadcasting media;
- b. access to locally controlled media and communications systems Including the Improvement and expansion of facilities to broadcast and rebroadcast In their own communities; and
- c. Increased production by Aboriginal and Torres Strait Islander people of their own linguistically and culturally relevant programs.

RECOMMENDATION 96.

The Commonwealth Government should:

- a. encourage the development of codes and policies relating to the presentation of Aboriginal and Torres Strait Islander Issues as recommended by the Royal Commission Into Aboriginal Deaths in Custody; and
- b. ensure Indigenous representation on the Boards of the Australian Broadcasting Corporation and the Special Broadcasting Service.

RECOMMENDATION 97.

The Commonwealth Government should:

- a. support the Introduction of national Indigenous media and communications infrastructure Including a National Radio Network and a National Remote Area Broadband Network; and
- b. ensure that the opportunities presented by the emerging "Information superhighway" are fully explained and, following negotiation, extended and appropriately adapted to the needs of Indigenous communities.

ECONOMICAL DEVELOPMENT

"Assets and money are power There is no self respect in accepting Government handouts. There is a need for communities to develop the assets base necessary to invest in enterprises which provide ongoing income streams. It is no good shaking your fist with one hand and opening your hand with the other."

7.1 The Government indicated that a focus of the social justice package should be on measures to increase the participation of Aboriginal and Torres Strait Islander people in Australian economic life.

7.2 In addition to native title issues, the Mabo decision raised broad issues of justice, economic development and reconciliation. The High Court stated:

"Aborigines were dispossessed of their land parcel by parcel, to make way for expanding colonial settlement. Their dispossession underwrote the development of the nation".

7.3 The character of this dispossession has denied indigenous people access to most of the nation's economically most productive land and resources. Aboriginal and Torres Strait Islander people must therefore develop their economic base into the twenty-first century from a position which sees nearly half the indigenous population living in areas where there is a limited industry base and no real labour market opportunities.

7.4 In areas where there is the possibility for participation in the mainstream economy, barriers arising from a history of prejudice and exclusion appear often insurmountable to indigenous people.

7.5 The diversity of indigenous peoples and of economic resources available to indigenous communities requires a range of responses by Government. The stimulation of economic growth and greater inclusion of indigenous peoples in mainstream employment and economic activities must be major elements of these responses. It is vital, however, to recognise the many unique features of indigenous societies and cultures, and to define economic development objectives in ways that are meaningful in indigenous terms.

7.6 Economic development cannot, therefore, be considered in isolation from broader reforms that underpin indigenous rights and recognition.

STRUCTURAL REFORM

7.7 It is a theme of this report that structural reforms should be considered which will underpin economic development on a sustainable basis.

7.8 An important element in respect to Aboriginal economic development in Canada and the United States is the link between sovereign control of Aboriginal lands and economic development. Sovereign control over lands has provided flexibility for land based economic growth. For example, some Canadian and United States communities have been able to offer incentives for manufacturers, casinos, engineering firms etc to establish alongside Aboriginal enterprises on their lands.

7.9 In these countries there is a growing interaction between industry Aboriginal leadership in a broad range of mutually beneficial endeavours. For example, joint venture arrangements are most likely to provide for private sector training and employment opportunities.

7.10 Since early 1993 the Commonwealth's contracting policy has precluded discrimination against indigenous tenderers and where contracts are likely to provide employment and training opportunities, has required tenderers to indicate the extent of indigenous participation in their bid. Where contracts are for construction and associated work on indigenous communities, Commonwealth agencies are asked to invite community participation in decisions concerning the award of contracts. Unfortunately there have been few positive outcomes in terms of increased indigenous employment or awarding of contracts to indigenous suppliers.

7.11 The United States Government has taken a further step of legislating to ensure that a percentage of its contracts are awarded to American Indian tribes or bands as well as other targeted groups. The outcome is that large and small corporations bidding for Government contracts are compelled to consider the means of achieving indigenous participation in their contract bids.

7.12 In Canada the Federal Government currently has a policy of ensuring that a percentage of its contracts be directed at Canadian Aboriginal peoples. It is now generally accepted, however, that significant progress in that country will also require legislation.

REALISM, NOT GOOD INTENTIONS

7.13 Underlying proposals for development of an economic base in most remote Aboriginal communities there needs to be a policy realism that recognises that remoteness, undeveloped technical and entrepreneurial skills, sometimes contradictory cultural values, lack of local and regional infrastructure, and a lack of capital and in many cases no land base, place enormous difficulties in creating self sustaining communities. A particular difficulty is faced by indigenous people in developing enterprises on Aboriginal land because of its inalienability. It is impossible to raise funds using land as collateral.

7.14 The reality is that most Aboriginal communities will require significant ongoing funding from external sources, whether from Government in the form of income support or funding of community initiatives or from other revenue streams such as royalty or compensation payments.

7.15 It must be recognised that any strategy to enhance economic growth will not result in immediate outcomes. Even the transition process of the emerging Asian economies involved a complex array of Government strategies and interventions, industry co-operation, improved educational and skill levels of the people and considerable effort and commitment on the part of the people themselves.

7.16 It is most important that Governments foster an environment for the emergence of partnerships between industry and indigenous communities. Industry leaders must be attuned to indigenous opportunities. There must be an acceptance by industry of the advantages of involving Aboriginal peoples and Torres Strait Islanders and by the same token Aboriginal entrepreneurs must see the advantages of linking with industry.

7.17 A key challenge for Government is how to stimulate the development of communities in ways which empower them and reduce dependency, how to encourage efficient management of community enterprises, and how to provide incentives which will bring about ongoing improvements to the well being of the community.

7.18 There are no easy answers to indigenous economic development. The role of Government remains crucial in the areas of employment initiatives, provision and maintenance of infrastructure, supporting targeted industries, service provision opportunities and through the provision of supplementary income streams to Aboriginal communities. It is also highly important there be adequate funding and support for programs providing capital for individual and community enterprises in response to opportunities identified by indigenous people.

7.19 The implications of greater levels of indigenous autonomy or sovereign control of Aboriginal lands for economic development in both urban and rural areas warrant serious consideration by the Commonwealth Government.

7.20 It is also most important to get the detailed processes right as well as the policy framework. Opportunities for individual and family initiatives need to be integrated more closely into community economic activity. The development of joint ventures is also an important option as it provides scope for direct involvement in enterprises and opportunities to learn business practices.

7.21 All too often well intentioned Aboriginal people move into entrepreneurial ventures only to suffer the harsh realities of the business sector. The lack of specific skills and backup support are often the major contributors to small business ventures fading.

7.22 It is imperative that policies harmonise and do not create anomalies and disincentives at the community level, for example by ensuring that communities that develop successful enterprises are not penalised by reductions in other sources of funds. Too often in the past there has been a history of reducing grants to communities when enterprises have shown a profit. This has resulted in disincentives to creating profits and crippled the capacity of the community to develop a capital base.

BUILDING UPON EXISTING INITIATIVES

7.23 The Aboriginal and Torres Strait Islander Commission has over the past two years initiated steps to facilitate greater participation by Aboriginal and Torres Strait Islander peoples in the economy of this country. These include targeting industries to identify where opportunities might present themselves. Industry strategies are being developed involving existing and projected industry growth, the opportunities for participation in both urban and rural areas and the unique contribution Aboriginals and Torres Strait Islanders can make to the growth of that industry. Three specific industries have been targeted in the first stage -arts and crafts, tourism and rural industries.

7.24 Similarly the initiatives announced by the Federal Government in the White Paper on Employment, *Working Nation*, should go some way to increasing employment levels in the private sector. But further measures of direct Government intervention are necessary to provide a basis for real economic development and self sufficiency. *The Working Nation* package must not lose sight of the fact that Aboriginal people are by far the worst off among Australia's long term unemployed.

7.25 Aboriginal Economic Development Policy (AEDP): The centre point of the Government's economic policies and programs for indigenous peoples is the Aboriginal Economic Development Policy (AEDP), introduced in 1987. The report of the Royal Commission into Aboriginal Deaths in Custody encompassed a number of recommendations for expansion and enhancement of the AEDP. More recently, a comprehensive review of the AEDP put forward 69 recommendations for improving the

participation of indigenous people in economic development and the more effective implementation of AEDP objectives.

7.26 A limited response to the AEDP review was provided by the Government through *Working Nation*. The reforms to labour market programs announced in that package included funding of a number of specific measures addressing the needs of indigenous people, including:

- \$42 million earmarked over 4 years for additional places in the Training for Aboriginals and Torres Strait Islanders Program, the Landcare and Environment Action Program, and Jobskills, and for Australian Vocational Certificate pilot projects; and
- \$109 million over 4 years for expansion of the CDEP scheme and the Community Economic Initiatives Program.

7.27 The AEDP task force, a representative body set up by the Government to oversee and monitor the effectiveness of programs under the AEDP, will be evaluating the review recommendations and overseeing their implementation.

7.28 The AEDP Review identified a number of major strategic issues and concluded that economic empowerment for Aboriginal peoples and Torres Strait Islanders is dependent on addressing these issues. These included:

7.29 **Demographic growth** - Population projections show the number of working age indigenous Australians is likely to increase by 7000 per year between 1991 and 2001.

7.30 **Education** - There is a direct linkage between education and employment prospects. There is continued need to support measures to increase participation and retention rates and to develop transition from education to work programs. Less than 50% of Aboriginal Australians aged 15-19 were attending school at the time of the 1991 census compared with 90% of the general population.

7.31 **Specific and Mainstream Programs** - At least until there is demonstrated effectiveness for indigenous people of mainstream labour market programs based on case management, continued support should be given to specialist indigenous labour market programs.

7.32 **Goals and objectives** - The report concluded that notwithstanding that indigenous people may seek different employment choices from nonindigenous Australians the following outcomes are sought for all Aboriginal and Torres Strait Islander people:

- development of community based initiatives that increase participation and ownership;
- education, skills training and work experience;
- increased numbers of self employed through economic development and enterprise;
- increase in number and quality of CDEP projects and places; and
- an overhaul of CDEP structures to make them more responsive.

7.33 **The community sector** - Specific strategies should be developed to maximise employment and economic development community organizations for the communities

which they service. Emphasis in the CDEP scheme should be shifted to economic community development and for those seeking mainstream employment.

7.34 **The public sector** - Specific employment targets should be set for Commonwealth, State and Local Government and organisations involved in indigenous affairs, including ATSIC.

7.35 **The private sector** - Disappointing performance in providing employment opportunities in the private sector needs to be addressed by measures which promote a positive awareness, targeting specific industries, increasing self employment, support of small business through the Business Funding Scheme and CDC, support for infrastructure development, developing joint ventures and the provision of loan guarantees to viable businesses.

7.36 **Industry Development** - Targeting of specific industries including rural development, tourism and arts and crafts.

7.37 **Regionalisation** - An emphasis should be given to Regional Planning to develop regionally based economic development strategies which would empower local people by identifying opportunities and the means to pursue economic development, providing appropriate training and research, monitoring support and better planning.

7.38 **Links with States and Territories** - Economic development requires a cooperative approach with State Governments, which should be responsive to the economic development strategies of ATSIC Regional Councils.

7.39 **Local Government** - Regional Councils need to work with and complement the efforts of Local Government in establishing regional economic bases.

7.40 **Policy Coordination and Reporting** - The National AEDP Task Force needs to have a stronger role and ability to make recommendations about the future directions of the policy.

THE CDEP SCHEME

7.41 The CDEP scheme is a major element of the Aboriginal Employment Development Policy. It provides an alternative to social security benefits in the form of Newstart (NSA) and Jobsearch (JSA) allowances; allowances which are treated by Governments as a right and are demand driven. Similarly indigenous people believe CDEP should be accessible to indigenous communities as a basic entitlement on the basis of demand, rather than be dependent upon Government decisions to allow 'work for the dole'.

7.42 The CDEP scheme needs to be enhanced in accordance with recommendations of a review conducted in 1993. In particular the CDEP scheme needs:

- to help ensure that participants have the opportunity to develop skills that will help them to enter the wider labour market;
- to be more attuned to industry opportunities;
- to provide the stepping stones to generate income and support economic development in communities;

- to be used to assist in developing infrastructure; and
- to improve the conditions for the successful development of business enterprises.

7.43 There are currently some anomalies and disincentives to participants of the scheme. CDEP participants, for example, suffer economic disadvantage, compared with people in receipt of the JSA/ NSA allowances, as they are not eligible for a range of benefits, rebates and concessions available to JSA/NSA recipients. In the interest of achieving real social justice this situation can no longer be tolerated and CDEP participants must be remunerated at an acceptable level.

INFRASTRUCTURE OPPORTUNITIES

7.44 The infrastructure deficit of Aboriginal communities remains a national disgrace. Whether through lack of will or resources, State and Local Governments have not performed well. An option is for the Commonwealth to assert its constitutional primacy in indigenous affairs and accept a national responsibility to overcome the infrastructure deficit of indigenous communities. This brings into focus the issue of responsibility for funding ongoing servicing and maintenance.

7.45 The evaluation of the National Aboriginal Health Strategy recommended that a human rights approach to Funding be adopted with major increases to all aspects of Aboriginal health to achieve a comparable standard with that of non-Aboriginal Australia. As much as \$2 billion would be needed in funding just to meet the backlog in housing and essential services in rural and remote communities in Australia, including the Torres Strait.

7.46 A major new initiative to overcome the infrastructure deficit of indigenous communities would need to be structured to provide training, employment and contracting opportunities for Aboriginal and Torres Strait Islander peoples. The program would need to operate in complementary ways with AEDP programs and with the reforms of *Working Nation*. In particular, there should be close coordination with ATSI's Community Economic Initiatives Scheme (CEIS), and a loans program to support involvement of individual Aboriginal and Torres Strait Islander contractors.

REGIONAL STRATEGIES

7.47 The basis for economic growth in Aboriginal and Torres Strait Islander communities should be regional strategies being developed by Regional Councils, many of which are beginning to undertake regional economic studies to obtain background information on areas of opportunity so that they, along with local Aboriginal and Torres Strait Islander organisations and communities, can develop the means of achieving greater indigenous participation in Australian economic life.

7.48 The identification of opportunities for Aboriginal and Torres Strait Islander communities within broader regional economic development strategies is also important. There must be scope within broader initiatives such as *Working Nation* for Regional Council involvement.

7.49 The Regional planning process has the capacity to provide an effective mechanism to facilitate enhanced economic development of indigenous peoples. Increased priority and emphasis should be accorded to that process by all Governments

and the needs and priorities of indigenous peoples recognised in funding to stimulate regional economic growth.

APPROPRIATE PROTECTION AND INCENTIVES

7.50 It is most important that appropriate policy settings are put in place to foster indigenous enterprise, and indigenous involvement in mainstream enterprise. For example, measures need to be put in place to protect the authenticity of indigenous arts and crafts and culturally based art works. The Government should examine ways of establishing an appropriate form of protection and be prepared to legislate for special arrangements if necessary to protect indigenous arts and crafts.

7.61 The indigenous arts and crafts market should be protected from importation of replica artefacts through import duties or prohibition. Incentives to encourage partnerships between industry and indigenous communities, particularly taxation incentives, which have proved successful in other indigenous contexts need to be investigated.

CONTRACTING FOR SERVICES

7.52 Indigenous enterprises should be preferred in contracting by Government for goods and services on Aboriginal communities. Where mainstream agencies are providing services to indigenous communities the contracting of services by indigenous persons should be explored in negotiations on service provision and through agreements.

7.53 Communities or bodies exercising self government roles should be able to contract for services from indigenous organisations as an alternative to obtaining these services from traditional forms of Government in accordance with negotiated arrangements.

7.54 A specific form of business opportunity arises from the provision of services on Aboriginal and Torres Strait Islander communities. Indigenous people are currently often not involved. This contrasts with the position in the United States, for example, where legislation guarantees the right of Indians to contract for the control or operation of Federal programs. This has been a feature of that country's policy since the 1970s. The encouragement given to indigenous tendering in Australia falls far short of this. It needs both to be strengthened and promoted.

ENTERPRISE, PROMOTION

7.55 Initiatives need to be put in place to raise the awareness of Government agencies about this key aspect of service delivery which would realise broader employment and business opportunities.

7.56 The Government could establish mechanisms to promote Aboriginal enterprises, to foster market access, and to provide incentives for joint ventures with the private sector.

CAPITAL FORMATION

7.57 While ATSIC and the Commercial Development Corporation have a variety of business funding schemes in place, it is important that the funding of indigenous business enterprises should not be confined to specific indigenous programs. Access and equity principles apply equally in this area as in the provision of human services. Agencies involved in business funding need to be able to demonstrate inclusiveness of indigenous peoples and adapt their programs if necessary.

7.58 It is imperative that the land base of indigenous communities be expanded so that no region is denied a fundamental economic, social and cultural base for development. The Indigenous Land Fund must be funded at levels commensurate with need.

7.59 To encourage in the short term indigenous involvement in mainstream enterprises, a proposal has been put forward for a joint "Stake in Industry" initiative by the Aboriginal and Torres Strait Islander Commercial Development Corporation and ATSIC. This proposal, involving allocations of \$ 1 0 million a year over 5 years, is to facilitate direct equity by local representative indigenous organisations in largescale mainstream commercial ventures.

7.60 There is a great need to provide opportunities for supplementary income streams through asset accumulation and compensation payments. Much work needs to be done in this area. In its consideration of the principle of compensation, the Government should give initial consideration to initiatives in four areas:

- royalties;
- land taxes;
- reassertion of traditional rights; and
- share holdings in Government enterprises.

CONSULTATIONS

7.61 **Economic Base:** The consultations emphasised the need to develop measures to establish indigenous peoples' assets bases as a means to independence. One of the key ways this could be achieved is through access to royalties in relation to industries that exploit a land or sea base. These include mining, fishing, tourism, native flora and fauna and the pastoral industry. It was also considered that Aboriginal communities should be provided with share holdings in Government business enterprises. It was generally considered assets should be under community control and not subject to outside direction in relation to usage.

7.62 **Business Funding:** A key point made in the consultations was that there should be access to a wider range of business funding sources. Some meetings considered the concept of an indigenous bank should be developed. There was a view that both ATSIC and the CDC should review business policies and procedures and that the AEDP should be more strategic in its funding approaches to foster economic development. AEDP should be more attuned to industry opportunities and CDEP should generate income and economic development in communities and provide incentives for these types of activities. Individual and family businesses need to be the focus of greater attention.

7.63 **Land Resources and Economic Development:** The importance of a land base as a springboard for any form of economic development was emphasised. Structurally,

the issue of royalties in relation to land and resource based industries was advanced as a supplement to Government grants to provide greater opportunities for communities to move towards becoming self sustaining so dependency on Government could be reduced. This would make it more appropriate for supplementary funding to be provided through block grants. Requirements for indigenous employment were also suggested in relation to major land and resource based industries, together with consultations with indigenous Australians in relation to major regional developments.

7.64 Indigenous Enterprise Development. The consultations indicated that indigenous economic development needed to be supported by policies which adopted a long term time frame in an environment which provided appropriate support mechanisms.

7.65 The potential role of Government and indigenous service providers (including ATSIC) in supporting indigenous businesses was highlighted. Some areas favoured an increased regional focus to assist in pooling of investment funds and the provision of resource support.

7.66 A theme in comments was that indigenous enterprises required special support from Government to assist in achieving viability. In addition to capital contributions and other forms of resource support such as training it was considered some areas of indigenous economic activity warranted specific protection. The indigenous arts and crafts industry, for example, should be protected against non authentic replicas and indigenous Australians should be accorded a special place in industries exploiting native flora and fauna. Government should also play an active role in promoting indigenous enterprises. Given the parlous assets position of Aboriginal communities, the Government should exclude Aboriginal community enterprises from taxation.

7.67 Mainstream Industry and Indigenous Participation The consultations suggested that particular industries should be targeted to promote economic development benefits for indigenous peoples. The possibility of tax relief for enterprises which provided indigenous opportunities was raised and also that indigenous peoples should be encouraged to pursue joint ventures in areas such as mining and tourism.

7.68 Areas where targeting was supported included mining and exploration, house construction, pastoral, fishing, traditional-oriented industries, national parks business opportunities, environmental control, native flora and fauna and tourism. It was also felt the year 2000 Olympics created special opportunities which needed to be exploited.

7.69 Enterprises involving use of land and resources that impacted on indigenous peoples' lifestyles and access to resources should be involved in negotiations with indigenous peoples concerning local employment. There was a particular problem in the fishing industry-for example, in the Torres Strait.

7.70 Promoting Indigenous Enterprises The consultations suggested greater emphasis should be given to promoting indigenous businesses and providing opportunities in value adding aspects of a business. There needed to be active indigenous involvement in trade missions, major international events and other promotional forums.

7.71 Tendering for Government Contracts Initiatives suggested in the consultations included preferential treatment to indigenous organisations tendering for contracts; imposing obligations on service providers and Government contractors to employ Aboriginal labour; and reform to tendering processes which did not oblige the cheapest quote to be accepted.

RECOMMENDATION 98

In developing and Implementing policies for economic development, the Commonwealth must:

- a. recognise that the many unique features of Indigenous societies and cultures require that economic development objectives be defined In ways that am meaningful in Indigenous terms;
- b. fully Involve indigenous people In the development and implementation of policies and programs for stimulating economic development; and
- c. note that this recommendation must inform the implementation of the recommendations which follow.

RECOMMENDATION 99.

The Commonwealth Government initiate a national housing and infrastructure program to remedy the housing and infrastructure deficit of Indigenous communities by the year 2001. The program should be structured to stimulate Aboriginal enterprise development and training.

RECOMMENDATION 100.

The Commonwealth Government should provide additional resources to accelerate formation of indigenous stake in Industry. This should Include:

- a. additional resources to assist indigenous community involvement in joint ventures, including encouraging Industry to invite active participation in mining, construction and other major economic activities, especially where these take place on Indigenous land; and
- b. increased funding for business support networks.

RECOMMENDATION 101.

The Commonwealth Government develop new programs, and augment existing programs, that will focus on enabling indigenous peoples to exploit strategic economic opportunities such as those associated With Olympic Games and those identified In the Rural, Tourism and Arts and Crafts Industries Strategies.

RECOMMENDATION 102.

The Commonwealth Government require service providers to Indigenous communities to give priority for contracting of services to Aboriginal and Torres Strait Islanders and indigenous organisations within the framework of negotiated agreements. To encourage tendering by Indigenous businesses, a preference scheme should be developed. When non Indigenous service providers are contracted employment and training opportunities must be provided.

RECOMMENDATION 103.

The Commonwealth Government should ensure that economic development Implications of the proposed Indigenous Land Corporation are coordinated with other Indigenous economic Initiatives including CDC, and ATSIC's business funding and community economic development programs.

RECOMMENDATION 104.

The Commonwealth Government should establish a high level national forum Involving Indigenous and business leaders to facilitate greater economic cooperation between mainstream business and Indigenous communities.

RECOMMENDATION 105.

In accordance with principles of the National Commitment, all Governments should ensure:

- a. Aboriginal and Torres Strait Islander participation in the management of their regional development planning processes,
- b. the Inclusive Involvement of Regional Councils; and
- c. relevant Government agencies participate in Regional Council planning processes.

RECOMMENDATION 106.

The Commonwealth Government should fully Implement the recommendations of the AEDP Review with particular emphasis on recommendations relating to training and education for greater participation In commercial, business and Industry development.

RECOMMENDATION 107.

The Commonwealth Government should ensure that in implementation of Working Nation Initiatives, emphasis be given to Improving the long term employment of Indigenous people, currently the most disadvantaged group in this category, and that explicit accountability measures be introduced which ensure access and equity.

RECOMMENDATION 108.

The Commonwealth Government accept that Aboriginal and Torres Strait Islander communities should be able to access the CDEP program as an entitlement.

RECOMMENDATION 109.

The Commonwealth Government immediately redress Inequities which serve as disincentives to CDEP participation compared with social security benefits such as Jobsearch or Newstart allowances. These should include:

- a. beneficiary rebate under the Income Tax Assessment Act;
- b. rent assistance;
- c. Income testing of social security benefits of partners of CDEP participants;
- d. concessions and rebates provided to social security benefit recipients by State and Territory Governments;
- e. eligibility for ABSTUDY assistance;

- f. home child care allowances; and
- g. eligibility for DEET training allowance.

RECOMMENDATION 110.

That the Commonwealth Government should set salary rates for the Community Development Employment Projects scheme at a level that provides an Incentive for participation in the scheme and compensates participants for the benefits, rebates and concessions available to ISM NSA recipients.

RECOMMENDATION 111.

The Commonwealth Government should amend the Aboriginal and Torres Strait Islander Commission Act 1989 to facilitate the return of Income generated by the Commission's business development program through the establishment of an economic development fund within the Commission.

RECOMMENDATION 112.

The Commonwealth government should encourage the development of indigenous financial services and, where these are established:

- a. ensure that funds payable under government programs utilise them to the maximum extent practicable; and
- b. encourage Industries and businesses operating in the area to make use of their services.

RECOMMENDATION 113.

The Commonwealth Government should provide tax incentives for the establishment of Industries on indigenous land.

IMPLEMENTATION STRATEGY

8.1 The recommendations put forward in this report cover an extraordinarily wide spectrum. Many will require considerable detailed development and negotiation before they can be put into place. Responsibilities will have to be allocated, expert advice sought, and the necessary resources obtained through the Budget. There will have to be ongoing processes of consultation with the Aboriginal and Torres Strait Islander communities to ensure that what is done will indeed meet indigenous needs and aspirations. And there must be adequate mechanisms for managing the implementation processes and ensuring that the impetus for reform is sustained.

8.2 While the detailed planning for all these activities cannot commence until the Government's decisions about the actual measures to be implemented are known, it is of the highest importance that a strategy for the implementation phase be worked out and ready to put in place.

8.3 It is suggested that, for the purposes of developing that strategy, the proposals in this report can be classified into three broad streams:

- a. policy changes, which could be implemented with comparatively little demand on resources;
- b. developmental proposals, relating to the further work needed to advance issues of recognition, rights, empowerment and equity, and
- c. program proposals, aimed at increasing resources for existing programs or establishing new programs identified during the consultation processes as of high priority.

POLICY CHANGES

8.4 Proposals falling within this category include:

- endorsement of the Principles for Indigenous Social Justice (Recommendations 1 and 2);
- commitment to making access and equity in the Commonwealth's mainstream programs a reality for Aboriginal and Torres Strait Islander people (Recommendations 10, 57 and 58);
- statutory recognition of the Aboriginal and Torres Strait Islander flags (Recommendation 50); and
- proclamation of a national day for indigenous Australians (Recommendation 51).

8.5 The proposals which have been included in this category are, by definition, those which should not require any significant developmental work. Once the decision is taken by Government to proceed with them, the implementation phase should be able to commence.

8.6 From ATSIC's perspective it would appear that there should be little additional call on resources for this category of proposals. It may be, however, that other agencies more directly involved will have a different view about what is required to get things up and going. And, for the longer term, there will be substantial resource implications. Effective implementation of social justice will cost.

8.7 *By and large*, it should be possible to accommodate any need for consultations with the Aboriginal and Torres Strait Islander community on this category of proposal within other consultative processes.

8.8 As with the other categories, however, monitoring and supervising implementation, and ensuring that the momentum of reform is maintained, will be vital.

DEVELOPMENTAL PROPOSALS

8.9 A large proportion of the proposals falls within this category. It includes:

- the commissioning of reports into various matters relating to compensation for past dispossession of land and dispersal of the indigenous population (Recommendations 32 and 33);

- for Constitutional reform, zone or State-based conventions for indigenous people to discuss options, establishment of an Indigenous Constitutional Reform Council, and a major public awareness program (Recommendations 19 to 24);
- developing the concept of Regional Agreements, and funding a number of pilot Agreements (Recommendations 35 to 37);
- measures to foster the development of indigenous selfgovernment (Recommendations 38 to 45)
- commissioning research into the concept of indigenous rights, and the implications of recognising, protecting and advancing those rights (Recommendations 16 to 18);
- consultations on ways of securing recognition of customary laws (Recommendation 84); and
- a comprehensive inquiry into the level and effectiveness of service provision to indigenous communities and options for funding service provision on a regional basis (Recommendation 62).

8.10 This will add up to a substantial task load of commissioned research and consultancies and of development, research and process monitoring and management within ATSIC. In addition, there will be need for ongoing consultative processes to ensure that proposals are being developed in ways that have the support of the Aboriginal and Torres Strait Islander community.

PROGRAM PROPOSALS

8.11 In addition to its emphasis on institutional and structural change, the social justice measures must address ways of improving program delivery and, where resources are clearly inadequate for the task, providing additional resources. That is needed to take account of the Government's indication that it would be looking for proposals to increase the participation of indigenous people in Australia's economic life, and to properly reflect the range of priorities expressed by Aboriginal and Torres Strait Islander people during the consultations, including employment and economic development, education, health, housing, community infrastructure and the provision of essential services.

8.12 Social justice for indigenous peoples is not to be achieved only by institutional and structural change, essential those these are. Equality of right means little if not matched with equality of opportunity to enjoy that right. Those denied the means to see equality in their daily lives are denied their rights, whatever the law and the declarations of good intent may say.

8.13 It is not the role of this report to put forward proposals for redressing all the deficiencies in present programs. Nor would it be in its capacity to do so; the task is so huge, the quantum of unmet need so vast. There are, in any event, excellent recommendations aplenty still awaiting implementation in the report of the Royal Commission into Aboriginal Deaths in Custody, as well as in the reviews of the Aboriginal Employment Development Policy (AEDP), the National Aboriginal and Torres Strait Islander Education Policy (AEP), and many other sources.

MANAGING IMPLEMENTATION

8.14 Of the utmost importance to successful implementation will be the creation of appropriate mechanisms for managing the implementation processes and ensuring that the impetus for reform is sustained. This will be a task that extends over a number of years, given the long term nature of many proposals.

8.15 ATSIC Commissioners will wish to maintain a close watch on developments, with regular progress reports to Board meetings, and with appropriate administrative support structures. The burden of managing implementation of these vital reforms should not, however, be placed solely on a busy Board with so many other demanding responsibilities. It will be essential, moreover, to ensure that a full range of Aboriginal and Torres Strait Islander expertise and interests is available for the task, and that non-indigenous persons with relevant expertise could be co-opted if that should prove desirable.

8.16 Such needs could be accommodated by further use of ATSIC Advisory Committee arrangements for overseeing the implementation phase.

RESOURCES

8.17 Given the nature and purpose of the Government's commitment to the development of further social justice measures, it is unthinkable that the costs of its development and implementation should be expected to come from within the existing resources for Aboriginal and Torres Strait Islander programs.

8.18 Additional resources will therefore be required to meet a range of resource requirements, including:

- research (much of which will need to be commissioned);
- information programs directed at both the indigenous and the wider Australian communities about the issues involved;
- further processes of consultation as concrete proposals for change are developed;
- once those proposals are developed, advocacy and negotiation;
- new and augmented programs;
- mechanisms for managing implementation; and
- administrative support.

8.19 Even without any new funding for programs, costs will run into millions of dollars for a number of years. The development of detailed proposals, however, lies beyond the scope of this report.

SUMMARY OF RECOMMENDATIONS

IMPLEMENTATION OF SOCIAL JUSTICE PACKAGE

Recommendation 1. The Commonwealth Government should adopt the Principles for Indigenous Social Justice as the foundation for its relations with Aboriginal and Torres Strait Islander peoples. They should be promulgated throughout the Commonwealth Government sector, and the Commonwealth Government should ensure, if necessary by legislation, that they are also adopted by State, Territory and local Governments.

Recommendation 2. Departments and agencies in all spheres of Governments must be obligated to implement the Principles and to report their performance annually. The Commonwealth Government should enshrine the Principles in legislation and should ensure appropriate monitoring procedures are adopted.

Recommendation 3. Performance Agreements for Departmental Secretaries and Heads of Statutory Authorities should include specific objectives which address the performance of departments and agencies in developing and improving services and support to Aboriginal and Torres Strait Islander peoples as clients and as employees, based on the Social Justice Principles.

Recommendation 4. The Commonwealth Government must make a commitment to effective implementation of all the elements of the 'package' by 2001 and regularly inform both the indigenous and wider community of progress. Accordingly the Commonwealth should ensure that departments and agencies in all spheres of Government, are required to:

- a. report annually on outcomes achieved for Aboriginal and Torres Strait Islander peoples in both mainstream and Aboriginal and Torres Strait Islander specific programs; and
- b. identify intended outcomes for Aboriginal and Torres Strait Islander peoples of any new programs or amended programs.

Recommendation 5. The Parliament must be involved in supervisory mechanisms to ensure the recommendations are implemented.

IMPLEMENTATION OF MAJOR REPORTS

Recommendation 6. The Commonwealth Government fully implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody including measures to ensure implementation by State and Territory Governments within their jurisdictions.

Recommendation 7. All Governments accept the importance of involvement of Aboriginal and Torres Strait Islander peoples in both implementation and monitoring of recommendations of the Royal Commission through Aboriginal Justice Advisory Committees (AJACs) and ensure that resources are provided for a national AJAC overview committee.

Recommendation 8. The Commonwealth Government effectively respond to and fully resource implementation of recommendations of:

- a. the 1994 AEDP Review;
- b. the 1994 AEP Review; and
- c. the 1994 NAHS Evaluation.

ENJOYMENT OF RIGHTS

Recommendation 9. The Commonwealth Government must ensure Aboriginal and Torres Strait Islander peoples are able to exercise and enjoy both their general citizenship rights and entitlements and their rights as indigenous peoples.

Recommendation 10. The Commonwealth Government should reinforce by legislation, applying to all spheres of Government, access and equity requirements to ensure indigenous peoples are able to exercise their citizenship rights. The legislation should:

- a. provide a general requirement that the aspirations, interests and needs of indigenous peoples, including the right to negotiate, are taken into account by all Australian Governments and their authorities, and that they adhere to access and equity principles and the principles of social justice in this report;
- b. require Government agencies to assess the impact of their programs on Aboriginal and Torres Strait Islander peoples;
- c. require Government agencies, where applicable, to specify intended outcomes for indigenous peoples and show cause if specific arrangements for indigenous peoples are not included;
- d. provide ATSIC with authority to seek reports from Government agencies on aspects of their policies, programs and service delivery relevant to indigenous people, including State and Territory programs funded by specific purpose payments; and
- e. ensure that these provisions are subject to the Commonwealth's administrative law provisions or are otherwise judicially enforceable and binding on all levels of Government.

Recommendation 11. The Commonwealth Government should commit itself to the principles contained in existing and emerging international instruments as the basis for developing a comprehensive approach to the protection of indigenous rights. These would help guide action in such areas as:

- cultural and intellectual property,
- recognition of customary law;
- flexible approaches to self determination including options of self government and regional agreements;
- entitlements to land and compensation for dispossession including the creation of new forms of co-extensive rights; and
- sharing in mineral and other resources.

Recommendation 12. The Commonwealth Government, in taking action to secure the rights of indigenous Australians, should take full account of the linkages between advancement of those rights and reforms in areas relating to:

- the Constitution and Constitutional reform;
- Commonwealth State roles and responsibilities;
- parliamentary reform; and
- funding arrangements.

Recommendation 13. The Commonwealth Government should recognise that flexible approaches to indigenous self determination are required and these will involve responsive adaptation of Governmental structures, processes and legislation.

Recommendation 14. The Commonwealth Government should acknowledge, preferably in legislation, that it has a fiduciary duty to indigenous people and should ensure the States and Territories take similar action.

Recommendation 15. The Commonwealth Government should make a commitment, following upon consultation and negotiation with indigenous peoples, to:

- a. ensuring that the endorsement of the Draft Declaration of the Rights of Indigenous People is achieved without undue delay, and
- b. ratification of ILO Convention 169.

Recommendation 16. The Commonwealth Government should resource, in consultation with ATSIC, the establishment of a process for defining indigenous rights and the most appropriate ways of ensuring their enforcement, including consideration of a Bill of Rights.

Recommendation 17. The Commonwealth Government should undertake a study on recognition of forms of community title which could give legal recognition to traditional or contemporary communal ownership rights.

Recommendation 18. The Commonwealth Government should undertake a study, separately or jointly with study referred to Recommendation 17, in conjunction with ATSIC and other appropriate indigenous and non-indigenous interests into the feasibility and scope for the assertion of co-extensive indigenous rights.

CONSTITUTIONAL REFORM

Recommendation 19. The Commonwealth Government should note that the national consultation process in relation to the Social Justice Package showed overwhelming support for the reform of the Constitution especially in relation to recognition of indigenous peoples.

Recommendation 20. The Commonwealth Government should adequately resource a process to manage the indigenous constitutional reform agenda after consultation with ATSIC and the Council for Aboriginal Reconciliation.

Recommendation 21. The Commonwealth Government should commit itself to regional, zone or State-based conventions to discuss options for Constitutional reform and to the principle of negotiating Constitutional reform and adequately resourcing these negotiations.

Recommendation 22. Prior to any constitutional referendum, the opinion of the indigenous community should itself be canvassed through appropriate means, including, perhaps, a survey of Aboriginal and Torres Strait Islander opinion conducted in conjunction with an ATSIC election.

Recommendation 23. The Commonwealth Government should commit itself to a major public awareness program to create an environment for change and understanding of indigenous Constitutional perspectives.

Recommendation 24. The Commonwealth Government shall ensure that Aboriginal and Torres Strait Islander people are adequately represented in any national constitutional convention which is held as part of broader processes.

POLITICAL REPRESENTATION

Recommendation 25. The Commonwealth Government should investigate the possibility of reserved seats in the Australian Parliament by commissioning a report on how this can be achieved.

Recommendation 26. The Commonwealth Government, as an interim measure, should introduce legislation to provide the Chairperson of ATSIC with the right:

- a. to observer status in the Parliament;
- b. to speak to either House on Bills affecting indigenous interests; and
- c. to make an annual report to the nation on indigenous affairs.

Recommendation 27. The Commonwealth Government should link financial assistance to local Government with reforms which encourage greater indigenous political representation.

Recommendations 28. The Commonwealth Government should reaffirm full membership of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA) for the Chairperson of ATSIC.

Recommendation 29. The Commonwealth Government should ensure that full voting membership of the Council of Australian Governments (COAG) be extended to the Chairperson of ATSIC.

Recommendation 30. The Commonwealth Government should continue to foster the development of ATSIC as a self determining indigenous organisation and be open to ways of strengthening the principle of self determination within its structure. In consultation with the Commission, the Government should consider all options, including the employment status of ATSIC staff, which reinforce this principle without limiting the Commission's role to participate in government policy and program development affecting Aboriginal and Torres Strait Islander peoples.

Recommendation 31. The Commonwealth Government should not compromise ATSIC's role as the principal adviser to Government on Aboriginal and Torres Strait Islander affairs. In this regard, the Office of Indigenous Affairs should be abolished or at the very least, its role kept to an absolute minimum, clearly defined and differentiated from that of the Commission.

COMPENSATION AND REPARATIONS

Recommendation 32. The Commonwealth Government support the principle of negotiating compensation and/or reparations, including at a local and regional level, with Aboriginal and Torres Strait Islander peoples as part of any proposal for a treaty or document of reconciliation.

Recommendation 33. The Commonwealth Government commission reports in conjunction with ATSIC into the following compensation/ reparations issues:

- mining Royalties as a basis for general compensation/ reparations;
- land rates and property taxes as a basis for general compensation/reparations;
- co-extensive title;
- compensation/reparations and regional agreements; and
- personal compensation for forced removal of Aboriginal peoples from their families, loss of land, language, law and culture.

Recommendation 34. The Commonwealth Government publicly commit and instruct the Department of Finance that compensation for indigenous purposes or payable to other persons as a consequence of legislation relating to Aboriginal and Torres Strait Islander purposes shall not be funded in whole or in part by budgetary offsets to programs for indigenous purposes.

REGIONAL AGREEMENTS

Recommendation 35. The Commonwealth Government accept the concept of regional agreements as a framework for establishing a range of formal relations and settling of outstanding social justice issues on a regional basis.

Recommendation 36. The Commonwealth Government commence negotiations with indigenous interests, after advice from ATSIC, on a set of principles and benchmarks which should underpin the development of Commonwealth policy on and facilitation of regional agreements.

Recommendation 37. The Commonwealth Government, without denying the right of any group to seek independently the development, negotiation and establishment of their own agreement, undertake to fund through ATSIC a number of pilot studies in conjunction with regional indigenous interests to:

- a. examine the scope and feasibility for formal agreements in respect of service delivery, land use, political and economic development and maintenance and development of cultural life; and

- b. foster the development of Australian experience and expertise in establishing agreements and associated processes.

The selection of diverse regions/communities for pilot projects to be undertaken by ATSIC in consultation and negotiation with Regional Councils and major local community-controlled organisations.

INDIGENOUS SELF GOVERNMENT AND REGIONAL AGREEMENTS

Recommendation 38. The Commonwealth Government should acknowledge that:

- a. indigenous self government is a self determination option for some Aboriginal and Torres Strait Islander peoples;
- b. forms of indigenous self government should not be restricted by existing divisions of powers and roles and responsibilities between Commonwealth, State and Local Government;
- c. ATSIC provides a structure which is capable of furthering self determination at the national and regional level; and
- d. that indigenous self government may be the subject of Regional Agreements.

Recommendation 39. The Minister for Aboriginal and Torres Strait Islander Affairs consider the outcomes of the Review of the Aboriginal Councils and Associations Act with a view to advising Government on opportunities its reform may provide to extend local and regional models of self-determination, and that this advice be formulated in consultation with ATSIC.

Recommendation 40. The Commonwealth Government should facilitate inter governmental negotiations on regional self government in circumstances where such assistance is requested by appropriate indigenous interests in the region and the Aboriginal and Torres Strait Islander Commission.

Recommendation 41. The Commonwealth Government in its consideration of Regional Agreements policy should ensure that provision is made for the option of regional self government

Recommendation 42. The Commonwealth Government should facilitate the establishment of a task force involving the Commonwealth and Queensland Governments and the Torres Strait Regional Authority to develop a framework for a Regional Agreement to facilitate greater local control and authority over decision-making in the Torres Strait and mechanisms to enhance the powers and operations of the Torres Strait Regional Authority.

Recommendation 43. The Commonwealth Government should give a formal reference to a Parliamentary Committee to examine the steps to be taken towards the development and appropriate forms of self-government for the Torres Strait area.

Recommendation 44. The Commonwealth Government should facilitate the negotiation of a regional agreement to define the fundamental aspects of the relationships between the Commonwealth and Queensland Government and the people of the Torres Strait.

Recommendation 45. The Commonwealth Government in conjunction with the Queensland Government seek a report from the Commonwealth Grants Commission on the level of services and standard of living enjoyed by the residents of the Torres Strait.

NEGOTIATION OF A TREATY

Recommendation 46. The Commonwealth Government should note that the consultations supported the concept of a treaty under-pinned by regional agreements.

Recommendation 47. The Commonwealth Government agree that the initial stage in the development of a treaty should be the development of a framework agreement negotiated after both indigenous peoples and Government have developed settlement principles.

Recommendation 48. The Commonwealth Government agree that the negotiation process should be adequately funded by Government.

Recommendation 49. The Commonwealth Government agree that a mechanism independent of the parties should be established, after consultation with ATSIC and the Aboriginal Reconciliation Council, to manage the negotiation process.

RECOGNITION OF INDIGENOUS FLAGS AND A NATIONAL DAY

Recommendation 50. The Commonwealth Government amend existing legislation or enact new legislation to formally recognise the Aboriginal and Torres Strait Islander flags as the flags of the indigenous peoples of Australia;

Recommendation 51. The Commonwealth Government consult with ATSIC and NAIDOC with a view to proclamation of a national day of commemoration for the indigenous peoples of Australia,

Recommendation 52. The Commonwealth Government establish a Task Force including representation from ATSIC and NAIDOC to recommend a new date for celebration of Australia's national day and to examine the range of national symbolism with a view to ensuring a more inclusive approach to the position and interests of indigenous peoples.

PUBLIC AWARENESS OF INDIGENOUS ISSUES

Recommendation 53. The Commonwealth Government should make it a condition of education funding that States and Territories introduce Aboriginal and Torres Strait Islander Studies in all primary and secondary schools and post secondary institutions.

Recommendation 54. The Commonwealth Government should make it a condition of education funding that States and Territories develop educational curricula and programs which seek to eliminate racist attitudes and practices, and promote inter-cultural understanding, and accurate recording of histories.

Recommendation 55. The Commonwealth Government should support with adequate funding an ongoing public awareness program through ATSIC and the Council for Aboriginal Reconciliation to promote understanding amongst indigenous and non

indigenous Australians and ensure a balanced and historical accurate presentation of contemporary indigenous issues.

Recommendation 56. The Commonwealth Government should ensure all new migrants are provided information about indigenous Australian cultures as part of the process of attaining resident status and/or citizenship.

STRENGTHENING ACCESS AND EQUITY

Recommendation 57. The Commonwealth Government should improve and strengthen the effectiveness, relevance and performance of the Access and Equity Strategy by making it mandatory that, in respect of all mainstream programs of relevance to Aboriginal and Torres Strait Islander peoples:

- a. program design, development and delivery arrangements recognise the unique needs and aspirations of indigenous people;
- b. indigenous people be fully involved in program development, operation and evaluation through independent structures and procedures which are under their control; and.
- c. the Strategy incorporate the Social Justice Principles of this report.

Recommendation 58. The Auditor General in conducting program audits should be required to report on compliance with the Access and Equity Strategy and the Social Justice Principles with particular reference to ensuring Aboriginal and Torres Strait Islander issues are being addressed and an equitable share of government-managed resources is being achieved.

REFORM OF COMMONWEALTH STATE FINANCIAL RELATIONS

Recommendation 59. The Commonwealth Government in determining its relationship with State, Territory and local Governments should be guided by:

- a. the principles of Social Justice outlined in this report;
- b. the principles of the National Commitment,
- c. access and equity principles;
- d. the findings of the Royal Commission into Aboriginal Deaths in Custody, and
- e. national Aboriginal and Torres Strait Islander policies in functional areas such as education, employment and health.

This recommendation applies particularly in respect of Recommendations 60 to 66.

Recommendation 60. State, Territory and Local Governments should be required to account for activities funded through the Commonwealth's General Revenue Assistance and from their own revenues which impact on indigenous peoples and should ensure that Aboriginal and Torres Strait Islander peoples receive adequate access to, and enjoy equitable treatment in, programs and activities so funded.

Recommendation 61. The Commonwealth Government ensure that all future Specific Purpose Payment (SPP) arrangements which have the potential to affect service delivery to Aboriginal and Torres Strait Islander peoples include conditions specifically aimed at ensuring that indigenous people have full access to and equitable treatment in, programs funded under those arrangements.

Recommendation 62. The Commonwealth Government should, in consultation with ATSIC, initiate a comprehensive inquiry into the level and effectiveness of expenditure by the States and Territories and local Government on service provision for Aboriginal and Torres Strait Islander peoples. This inquiry should be conducted by the Commonwealth Grants Commission or an independent expert as a matter of urgency and be completed by the end of 1995. The inquiry should have particular regard to current assessments of State/Territory expenditure requirements and general community standards, and would encompass, among other things:

- a. recurrent and capital needs of indigenous communities to upgrade and maintain service provision to an acceptable and standard level, comparable to wider community standards, by 2001;
- b. the range of revenue sources for Aboriginal and Torres Strait Islander community service provision, including community raised revenue and that currently provided or administered at Commonwealth, State/Territory or local Government levels; and
- c. options for funding service provision on a regional basis.

Recommendation 63. The determination of recurrent expenditure requirements of the States and Territories in respect of Aboriginal Community Services should be based on an independent assessment of community needs and excluded from the Commonwealth Grant Commission assessments for the purposes of General Revenue Grants to the States/Territories and

- a. Aboriginal and Torres Strait Islander Community Services be funded by Specific Purpose Payments; and
- b. an additional category of Specific Purpose Payments be established for funding of capital works.

Recommendation 64. The Commonwealth Government, in considering programs funded through Specific Purpose Payments, examine the scope for, and trial where possible, direct funding of Aboriginal communities.

Recommendation 65. The Commonwealth Government include special measures in SPP arrangements, including incentives where appropriate, for furthering the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Recommendation 66. The Commonwealth Government ensure conditions are attached to its funding of local Government under provisions of the Local Government (Financial Assistance) Act to ensure:

- a. effective and equitable provision of local Government services to Aboriginal and Torres Strait Islander individuals, households and communities;

- b. funding is effectively coordinated with direct program assistance to Aboriginal and Torres Strait Islander peoples; and
- c. greater indigenous participation in Local Government.

HOUSING AND INFRASTRUCTURE

Recommendation 67. The Commonwealth Government introduce a National Aboriginal and Torres Strait Islander Housing and Infrastructure Program to remedy the capital deficit of indigenous communities by 2001.

HEALTH

Recommendation 68. The Commonwealth Government implement the recommendations of the National Aboriginal Health Strategy Evaluation and in particular address the health implications of the living environment of indigenous communities. (See also Recommendation 64)

EDUCATION AND TRAINING

Recommendation 69. The Commonwealth Government reaffirm its commitment to the Aboriginal and Torres Strait Islander Education Policy and resolutely address the recommendations of the Review of the AEP,

LAW AND JUSTICE

Recommendation 70. The Commonwealth Government make a renewed commitment, supported by an increased emphasis on Specific Purpose Payments to States and Territories, to address the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Recommendation 71. The Commonwealth Government give urgent consideration to the establishment of a National Aboriginal and Torres Strait Islander Justice Advisory Committee which would have a major role in monitoring evaluation and reporting on implementation of the recommendations of the Royal Commission.

SPORT AND RECREATION

Recommendation 72. The Australian Sports Commission develop a focused access and equity program to foster participation of indigenous Australians in national sport with particular reference to the underlying disadvantages and youthful composition of the indigenous population.

Recommendation 73. The Commonwealth Government should ensure that in measures to address the housing and infrastructure backlog of indigenous communities, particular attention is paid to the provision of adequate sporting and recreation facilities. (See also Recommendation 67)

INDIGENOUS WOMEN

Recommendation 74. The Commonwealth Government should ensure that in respect of actions flowing from the recommendations in this Report:

- a. full consideration is given to the implications of proposed actions for indigenous women; and
- b. indigenous women are adequately represented in all forums involved in developing, or monitoring the implementation of, these recommendations.

HERITAGE PROTECTION

Recommendation 75. Government policy and legislation relevant to the ownership and protection of culturally significant places, areas and Objects for Aboriginal and Torres Strait Islander peoples should:

- a. ensure indigenous control of the protection, preservation and promotion of their cultures and heritage; and
- b. recognise that these unique cultures are Australia's indigenous heritage.

Recommendation 76. The Commonwealth Government must adopt a national policy for protection and return of significant cultural property for Commonwealth institutions and ensure that similar policies are applied in States and Territories.

Recommendation 77. The national policy should encompass:

- a. human skeletal remains, tissue material and burial artefacts
- b. significant objects of religious and cultural property, in accord with Aboriginal and Torres Strait Islander traditions; and
- c. cultural objects which are of particular significance to Aboriginal and Torres Strait Islander peoples.

Recommendation 78. The Commonwealth Government should adopt policies and strategies to encourage and promote, within its own agencies and within State and Territory agencies, Aboriginal and Torres Strait Islander management and control over decision-making in all areas responsible for Aboriginal and Torres Strait Islander heritage protection.

Recommendation 79. The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 should be amended immediately to provide protection for sites, places and objects during conciliation and consultation procedures.

Recommendation 80. The Commonwealth Government should proceed to establish minimum benchmarks for heritage legislation and incorporate these in new legislation for protection of significant sites. The legislation should provide the option for Aboriginal and Torres Strait Islander people to invoke Commonwealth provisions where State/ Territory legislation does not meet such minimum standards. The legislation should provide for:

- a. protection for indigenous sites and areas during conciliation and consultation procedures;
- b. requirements for Governments to consult directly with indigenous people affected or potentially affected by any planning or heritage application;
- c. adequate penalties for offences committed in relation to significant areas and places and power for indigenous people concerned with those areas and places to invoke respective penalty clauses whenever an offence occurs;
- d. a more comprehensive definition of significant Aboriginal and Torres Strait Islander areas, Places and sites which gives due emphasis to the contemporary cultural values of the local indigenous community, and
- e. establishment of a National Indigenous Heritage and Sites Authority to administer Commonwealth heritage legislation and to provide for an independent process of assessment.

PROTECTION OF INTELLECTUAL PROPERTY

Recommendation 81. The Commonwealth Government should amend statutes relevant to intellectual property rights to safeguard the integrity and ownership of indigenous cultural property in a manner which recognises the particular features of Aboriginal and Torres Strait Islander ownership, including perpetual and communal rights.

Recommendation 82. The Commonwealth Government should introduce measures to regulate and ensure appropriate compensation for agreed use of indigenous intellectual and cultural property.

Recommendation 83. The Commonwealth Government must ensure that ATSIC and appropriate indigenous organisations are fully involved in negotiating the legislative reform and other aspects of the recommendations relating to cultural protection.

CUSTOMARY LAW

Recommendation 84. The Commonwealth Government should ensure that effective processes are put in place for addressing the recommendations of the Australian Law Reform Commission Report on Customary Law Reform which would include:

- a. oversight by a committee comprising the Minister for Aboriginal and Torres Strait Islander Affairs, the AttorneyGeneral and the Chairperson of ATSIC, and
- b. extensive consultations with traditional law men and women.

ENVIRONMENT

Recommendation 85. The Commonwealth Government support the participation of indigenous peoples in the full range of environmental decision-making and planning processes at all level of Government. Indigenous people should be represented on decision-making bodies at the Commonwealth level or where the Commonwealth has a

partnership role. Similar representation should be encouraged at the State/Territory and Local Government level.

Recommendation 86. The Commonwealth Government should adopt a national policy of indigenous ownership of national parks, and use all means at its disposal to ensure its implementation.

Recommendation 87. The Commonwealth Government should review all relevant environmental legislation and procedures with a view to ensuring provision for consultation and negotiation with indigenous community interests in matters impacting on the environment and should provide for adoption of minimum standards.

Recommendation 88. The Commonwealth Government adapt LANDCARE to make it more accessible and appropriate for the needs of indigenous community land holders. Additional resources targeted for indigenous land care and management should be provided direct to community resource organisations.

Recommendation 89. The Commonwealth Government should support an education and information program to promote awareness of the range of issues associated with Aboriginal land management.

Recommendation 90. The Commonwealth Government legislate to provide for traditional access rights for Aboriginal and Torres Strait Islander peoples to public lands and waterways and for exemptions to be granted from any levies or fees normally applying to access or use.

LANGUAGES

Recommendation 91. The Commonwealth Government should acknowledge the right of indigenous peoples to be heard and receive information and be educated in their own languages.

Recommendation 92. The Commonwealth Government ensure State and Territory Governments implement Aboriginal and Torres Strait Islander language programs which are agreed to by the local community at early childhood, primary, secondary and tertiary levels.

Recommendation 93. The Commonwealth Government expand support for community language maintenance and retrieval initiatives.

Recommendation 94. The Commonwealth Government should commit itself to the provision of an adequate indigenous language interpreting and translating service with a particular emphasis in ensuring effective communication within the criminal justice system. Consideration should be given to ensuring Aboriginal management, control and employment as well as other related policy issues in the area of training and accreditation.

MEDIA AND COMMUNICATIONS

Recommendation 95. The Commonwealth Government should expand opportunities by ensuring an equitable distribution of resources within mainstream communication appropriations for:

- a. Aboriginal and Torres Strait Islander participation in mainstream broadcasting media;
- b. access to locally controlled media and communications systems including the improvement and expansion of facilities to broadcast and rebroadcast in their own communities; and
- c. increased production by Aboriginal and Torres Strait Islander people of their own linguistically and culturally relevant programs.

Recommendation 96. The Commonwealth Government should:

- a. encourage the development of codes and policies relating to the presentation of Aboriginal and Torres Strait Islander issues as recommended by the Royal Commission into Aboriginal Deaths in Custody, and
- b. ensure indigenous representation on the Boards of the Australian Broadcasting Corporation and the Special Broadcasting Service.

Recommendation 97. The Commonwealth Government should:

- a. support the introduction of national indigenous media and communications infrastructure including a National Radio Network and a National Remote Area Broadband Network; and
- b. ensure that the opportunities presented by the emerging 'information superhighway' are fully explained and, following negotiation, extended and appropriately adapted to the needs of indigenous communities.

ECONOMIC DEVELOPMENT

Recommendation 98. In developing and implementing policies for economic development, the Commonwealth must:

- a. recognise that the many unique features of indigenous societies and cultures require that economic development objectives be defined in ways that are meaningful in indigenous terms;
- b. fully involve indigenous people in the development and implementation of policies and programs for stimulating economic development, and
- c. note that this recommendation must inform the implementation of the recommendations which follow.

Recommendation 99. The Commonwealth Government initiate a national housing and infrastructure program to remedy the housing and infrastructure deficit of indigenous communities by the year 2001. The program should be structured to stimulate Aboriginal enterprise development and training.

Recommendation 100. The Commonwealth Government should provide additional resources to accelerate formation of an indigenous stake in industry. This should include:

- a. additional resources to assist indigenous community involvement in joint ventures, including encouraging industry to invite active participation in mining, construction and other major economic activities, especially where these take place on indigenous land; and
- b. increased funding for business support networks.

Recommendation 101. The Commonwealth Government develop new programs, and augment existing programs, that will focus on enabling indigenous peoples to exploit strategic economic opportunities such as those associated with the Olympic Games and those identified in the Rural, Tourism and Arts and Crafts Industries Strategies.

Recommendation 102. The Commonwealth Government require service providers to indigenous communities to give priority for contracting of services to Aboriginal and Torres Strait Islanders and indigenous organisations within the framework of negotiated agreements. To encourage tendering by indigenous businesses, a preference scheme should be developed. When non indigenous service providers are contracted employment and training opportunities must be provided.

Recommendation 103. The Commonwealth Government should ensure that economic development implications of the proposed Indigenous Land Corporation are coordinated with other indigenous economic initiatives including CDC, and ATSIC's business funding and community economic development programs.

Recommendation 104. The Commonwealth Government should establish a high level national forum involving indigenous and business leaders to facilitate greater economic cooperation between mainstream business and indigenous communities.

Recommendation 105. In accordance with principles of the National Commitment, all Governments should ensure:

- a. Aboriginal and Torres Strait Islander participation in the management of their regional development planning processes,
- b. the inclusive involvement of Regional Councils; and
- c. relevant Government agencies participate in Regional Council planning processes.

Recommendation 106. The Commonwealth Government should fully implement the recommendations of the AEDP Review with particular emphasis on recommendations relating to training and education for greater participation in commercial, business and industry development.

Recommendation 107. The Commonwealth Government should ensure that in implementation of Working Nation initiatives, emphasis be given to improving the long term employment of indigenous people, currently the most disadvantaged group in this category, and that explicit accountability measures be introduced which ensure access and equity.

Recommendation 108. The Commonwealth Government accept that Aboriginal and Torres Strait Islander communities should be able to access the CDEP program as an entitlement.

Recommendation 109. The Commonwealth Government immediately redress inequities which serve as disincentives to CDEP participation compared with social security benefits such as Jobsearch or Newstart allowances. These should include:

- a. beneficiary rebate under the Income Tax Assessment Act;
- b. rent assistance;
- c. income testing of social security benefits of partners of CDEP participants;
- d. concessions and rebates provided to social security benefit recipients by State and Territory Governments;
- e. eligibility for ABSTUDY assistance;
- f. home child care allowances; and
- g. eligibility for DEET training allowance.

Recommendation 110. That the Commonwealth Government should set salary rates for the Community Development Employment Projects scheme at a level that provides an incentive for participation in the scheme and compensates participants for the benefits, rebates and concessions available to JSA/NSA recipients.

Recommendation 111. The Commonwealth Government should amend the Aboriginal and Torres Strait Islander Commission Act 1989 to facilitate the return of income generated by the Commission's business development program through the establishment of an economic development fund within the Commission.

Recommendation 112. The Commonwealth government should encourage the development of indigenous financial services and, where these are established:

- a. ensure that funds payable under government programs utilise them to the maximum extent practicable; and
- b. encourage industries and businesses operating in the area to make use of their services.

Recommendation 113. The Commonwealth Government should provide tax incentives for the establishment of industries on indigenous land.

APPENDIX 1: MEMBERS OF THE ADVISORY COMMITTEE

Commissioner Charles Perkins (Chairperson)
Commissioner Luke Maynard (Deputy Chairperson)
Commissioner Kumantjay Ross
Commissioner Joseph Elu
Ms Marjorie Thorpe, Lake Tyers Aboriginal Trust
Ms Linda Burney, Aboriginal Education Consultative Group Inc.
Mr Rob Riley, WA Aboriginal Legal Service

APPENDIX 2: SUBMISSIONS TO THE ADVISORY COMMITTEE

Akee, Jim
Aboriginal Corporation for Homeless and Rehabilitation Community Services
Aboriginal Legal Rights Movement Inc.
ACT Aboriginal and Torres Strait Islander Advisory Council
Australian Bureau of Statistics-Aboriginal and Torres Strait Islander Statistics Unit
Australian Education Union
Australian Heritage Commission
Australian Institute of Aboriginal and Torres Strait Islander Studies
Australian Local Government Association
Batemans Bay Aboriginal Community
Bega Barnbirringu
Brindabella, Coalition of Aboriginal Organisations Inc.
Cairns & District Regional Council
Central Land Council
Churches of Christ in Australia
Department of Education, Employment and Training
Department of Employment, Technical and Further Education, SA
Department of Foreign Affairs and Trade
Department of Tourism
FATSIL
Fisher, Cecil
Follett, Rosemary MLA, Chief Minister, ACT
Getano Lui Jr, (Torres Strait Regional Authority)
Holding, Clyde MP
Human Rights & Equal Opportunity Commission
Indigenous Elders Council
Institute of Aboriginal Development
Kimberley Aboriginal Law & Culture Centre
Kimberley Land Council
Kimberley Language Resource Centre
Liberal Party of Australia (WA Division)
Langford Ginibi, Ruby
Mer Council of Elders
Ministry for the Status & Advancement of Women, NSW
National Federation of Aboriginal Education Consultative Groups
NSW AECG Inc.
NSW Council for Civil Liberties Inc.
Office of Aboriginal Development, NT
Office of the Status of Women, Tasmania
O'Rourke, Michael
Penrith, Mervyn
Redfern Consultation Meeting-Additional Report
SNAICC
Tambling, Senator Grant
Tanami Network
Tbarpuntoo Legal Service Aboriginal Corporation
Torres Strait Regional Authority
Tranby Co-operative for Aborigines Limited
University of Newcastle
University of Queensland

University of South Australia
 University of Southern Queensland
 University of Western Sydney
 Victorian Aboriginal Education Association Incorporated
 World Vision Australia

APPENDIX 3: COMMUNITY CONSULTATIVE MEETINGS

STATE and ATSIC ZONE	LOCATIO N	DATES
NSW East	Tamworth	2 August, 20-21 October
NSW Metro	Sydney	5 August, 2- 3 November
NSW West	Dubbo, Wagga Wagga	1 August, 19-20 October
NT Central	Alice Springs, Katherine	19 July, 10- 11 October
NT North	Mandorah , Katherine	21 July, 10- 11 October
QLD - Torres Strait	Thursday island, 5 major Islands	2 August, 1- 4 November
QLD Far North West	Cairns, Mount Isa	20 July, 19- 20 October
QLD Metro	Ipswich, Brisbane	25 July, 26- 27 October
QLD North	Townsville , Cairns	22 July, 10- 11 October
QLD South	Emerald, Roma	12 July, 12- 13 October
South Australia	Port Augusta	28 July, 12- 13 October
Tasma nia	Launcesto n	15 July, 6-7 October
Victoria	Melbourne , Bendigo	29 July, 17- 18 October
WA Central	Karratha, Carnarvon	14 July, 13- 14 October
WA North	Broome	12 July, 13- 14 October
WA	Perth,	25 July, 17-

South
West
WA
South-
East

Narrogin

18 October

Kalgoorlie,
Port
Hedland

27 July, 12-
13 October