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Tania Jackman

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LEGAL, CONSTITUTIONAL AND
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COMMITTEE

From: CASTELLANI Giovanna]
Sent: Monday, 13 September 2004 5:03 PM
To: LCARC
Cc: TATTEN John
Subject: Indigenous Coordination Centre's Response to the Qld Constitution Preamble

Dear Secretariat

As agreed last week with a member of the research team, attached is the Indigenous Coordination Centre's response to the current Inquiry. I negotiated an extension until Monday 13 September 2004. A hardcopy will be posted tomorrow.

Any queries, please contact myself on 3006 4814 or John Tatten on 3006 4801.

Regards

Giovanna Castellani
Senior Policy Advisor
Indigenous Coordination Centre
Office of Indigenous Policy Coordination
Brisbane.

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<<ICC Response - Qld Constitution Preamble - Sept 2004.doc>>



Australian Government

Indigenous Coordination Centre Brisbane

Dr Lesley Clark MP
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Dr Clark

Thank you for the opportunity to provide comment on the Committee's current inquiry about a preamble for the Queensland Constitution.

Significant reforms have been undertaken by the Australian government since the Aboriginal and Torres Strait Islander Services (ATSIS) provided comments to your committee in May 2004. The government announced the proposal to abolish ATSIC and ATSIS in April 2004, and since the beginning of July 2004, the majority of ATSIS administered programs have been transferred to mainstream Australian government agencies.

The newly created Office of Indigenous Policy Coordination (OIPC) situated within the Department of Immigration, Multicultural and Indigenous Affairs, is leading the new government approach at the national level. Under the directions of the OIPC, a presence is being established in each of the states and territories and Indigenous Coordination Centres (ICCs) have replaced the former ATSIS offices. The ICCs are multiple-agency centres operating under a whole-of-government framework to ensure greater government coordination and minimise existing duplication. The rationale behind this approach is to improve the way services are delivered to Indigenous Australians.

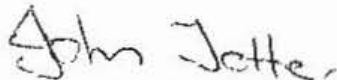
The new arrangements have only just commenced, and it will require cooperative efforts by all levels of government and Indigenous peoples for genuine improvements to be realised in the lives of Indigenous peoples. The OIPC and the ICCs are in the process of finalising their functions and administrative arrangements, however one of our primary roles is to engage with Indigenous peoples at the local and regional levels to ensure government service delivery is based on the needs of Aboriginal peoples and Torres Strait Islanders. ATSIC will be the starting point, with the intention for this nucleus to be expanded to include a cross-section of elected and representative Indigenous peoples and organisations.

The future of ATSIC is yet to be decided, as the bill to abolish ATSIC was not passed by the Senate. In the bill, the government proposed to abolish the ATSIC Board of Commissioners on the day the legislation was passed, with the Regional Councils to be retained under 30 June 2005. A Senate committee was established in June 2004 to inquire into the government's proposal, and was recently deferred due to the current election period. A decision regarding the inquiry will be made when the new parliament resumes after October 2004.

Given the current environment, we have been unable to undertake detailed consultation with ATSIC, other peak Indigenous bodies and community representatives about the proposal to include a preamble to the Queensland constitution. However we would like the opportunity to provide comment on a number of issues.

If you would like any further information or would like to discuss how we could assist in the next stage of your inquiry, please contact myself on 07 3006 4801 or Giovanna Castellani on 07 3006 4814.

Yours sincerely



John Tatten
A/g Manager
Indigenous Coordination Centre
Office of Indigenous Policy Coordination
Brisbane

13 September 2004

Comments – Preamble for the Queensland Constitution

Constitutional Recognition of Aboriginal peoples and Torres Strait Islanders

Constitutional recognition has long been advocated by Aboriginal peoples and Torres Strait Islanders as the existing Queensland and federal constitutions make no mention of Aboriginal peoples and Torres Strait Islanders. ATSIC, as the principle body representing Aboriginal peoples and Torres Strait Islanders, has repeatedly advocated for constitutional guarantees to be instituted within the federal constitution, alongside state and territory recognition.¹ Whilst recognition of Indigenous peoples in the Queensland preamble would not grant any substantive or legal rights, it would hopefully lead to greater attitudinal change of Queensland's citizenry about Australia's pre and post-colonial history and Indigenous culture.

Australia is the only new-world country that has not afforded constitutional recognition to its Indigenous peoples or entered into some form of treaty. We are severely lagging behind Canada, New Zealand and the United States of America and some commentators have suggested this lack of recognition (and other legal safeguards) is one of the reasons Australia has a twenty year life gap between Indigenous and non-Indigenous Australians (compared with nine years for New Zealand, seven years for Canada and six for the United States).²

ATSIC reasserted the need for constitutional recognition in their response to Legal, Constitutional and Administrative Review Committees' *Hands on Parliament* Inquiry in 2002, and stated that constitutional reform and recognition is needed of Aboriginal peoples and Torres Strait Islanders' unique status at the federal and state-territory level.

Victoria have recently tabled a bill in August 2004 to amend the constitution and give recognition to Victoria's Aboriginal people. This is seen as a positive development by many Indigenous peoples and the bill has been deferred for further discussion between political parties. Detailed community consultations occurred with ATSIC, other Indigenous peak bodies and community members on drafting the bill and the text used.

Consultation Process

We recommend that a genuine and widespread consultation process be undertaken with Aboriginal peoples and Torres Strait Islanders to discuss the proposal to include a preamble and to also discuss appropriate text.

¹ ATSIC, *Recognition, Rights and Reform: Report to the Government on Native Title Social Justice Measures*, 1995, pp 23-71.

² See Kaufmann, Paul, *Diversity and Indigenous Policy Outcomes: Comparisons between four nations*. Paper presented at the Third International Conference on Diversity in Organisations, Communities and Nations, February 2003, Hawaii.

Inclusion of Indigenous peoples in a preamble

Some Indigenous peoples hold the view that they have never ceded their sovereignty as a nation. Even though Indigenous sovereignty has not been recognised by Australia, many Indigenous people will strongly debate any reference to Indigenous peoples in the Queensland constitution as it could give legitimacy to the original nature by which Australia was illegally acquired and thereby extinguishing Indigenous sovereignty.

This issue arouses passionate debate, and it was intensely debated after the Council for Aboriginal Reconciliation (CAR) final report to government in 2000 and the following treaty discussions, and it continues to be debated by Indigenous peoples. Given the strong views for and against constitutional inclusion and Indigenous recognition, detailed and extensive discussion needs to be held with Indigenous peoples on this issue. All views are valid and deserve an open forum for discussion and debate.

The history of British settlement in Queensland has a relatively short history (1824) compared with traditional history of Indigenous peoples on this land (60 000 years) hence any reference to Indigenous peoples in Queensland's constitution must ensure a detailed and genuine consultation process. The Queensland government and parliament have repeatedly recognised Aboriginal peoples and Torres Strait Islanders as the traditional owners of this land, hence a practical demonstration of this recognition is to ensure a genuine consultation process is undertaken to ascertain support for Indigenous peoples inclusion in the preamble to the Queensland constitution.

We recommend that the Committee undertake further discussions with ourselves, ATSIC, and the Department of Aboriginal and Torres Strait Islander Policy (DATSIP) to discuss how a genuine consultation process with Aboriginal peoples and Torres Strait Islanders in Queensland should be designed. In Victoria, a detailed consultation process was undertaken to adopt the preamble and we suggest the Committee receive advice about the process used in Victoria.

Preamble Text

We do not recommend that the Queensland Constitutional Review Commission's draft preamble text be adopted in Queensland. Indigenous people need to be involved in drafting the text as it will refer to Indigenous peoples long history in Queensland and their unique status as Indigenous peoples. As we mentioned in our earlier correspondence to your committee, the draft text refers to Aboriginal peoples and Torres Strait Islanders as being the original occupants and *custodians* of Queensland – many Indigenous peoples will dispute this term in favour of traditional ownership, in keeping with the legal recognition granted by the High Court Mabo judgement and the rejection of the doctrine of terra nullius.

The Queensland government have made a number of statements, agreements and policies that recognise the inherent rights of Aboriginal peoples and Torres Strait Islanders, including the recognition of Indigenous peoples as the traditional owners of Australia who have an unique relationship with the land and waters.³ If it is agreed that recognition of Indigenous people be included in the preamble, a strong argument can be made for ensuring the text in the preamble reflects previous policies and statements made by the Queensland government, and the High Court Mabo judgement.

³ For further information, see the Queensland government's *Reconciliation Action Plan* (2001) and the *Commitment to Partnership* (2002) between ATSIC and the Government of Queensland.