

THE RHETORIC OF AUSTRALIAN RECONCILIATION

This paper argues that at a rash and impossible promise by Australia's Prime Minister to compete a treaty between the government and Aborigines, in the next two years, resulted in a ten year long process replete with rhetoric which replaced the promised treaty with a process of reconciliation. The conclusion is that this misguided process achieved no benefit for its intended target so that eventually even the concept was redescribed as "practical reconciliation" according to which any improvement in the lives of Aborigines is attributed to it. The bulk of this paper deals with attempts by indigenous bodies and the government appointed council trying to salvage something of advantage out of the process which has been legislated and funded but whose core meaning was unclear except in so far that its outcome would be seen as having removed Aboriginal disadvantage. The story of that reconciliation process is remarkably similar to another ten yearlong campaign to improve the prospects of Australia's Aborigines: a change in Australia's constitution removed the prohibition on legislating over Aborigines. A ten-year public campaign had given the government new powers, which weren't used for over twenty years and then were used to disadvantage Aboriginal interests.

Keywords: reconciliation process, aboriginal, referendum, treaty

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Članek dokazuje, da je nepremišljena in neizvedljiva obljuba avstralskega premiera, da bo v naslednjih dveh letih sklenil sporazum med vlado in Aborigini, imela za posledico desetleten proces, poln razpravljanja, ki je nadomestil obljubljeni sporazum s procesom sprave. Sklep je, da ta zgrešeni postopek ni prav nič prispeval k dosegu postavljenega cilja, tako da je bila končno celo zamisel sama na novo opredeljena kot "praktična sprava", kateri naj bi bilo pripisano vsakršno izboljšanje v življenju Aboriginov. Glavnina tega članka se ukvarja s poskusi staroselskih organov in vladnega sveta, da bi potegnili vsaj nekaj prednosti iz procesa, ki je bil uzakonjen in finančno podprt, a je bil njegov bistveni pomen nejasen, razen glede tega, da bo videti, da je njegov rezultat izboljšal položaj Aboriginov. Zgodba tega pravnega procesa je presenetljivo podobna neki drugi desetletni kampanji za izboljšanje prihodnosti avstralskih Aboriginov: sprememba avstralske ustave je ukinila prepoved izdajanja zakonov o Aboriginih. Desetletna javna kampanja je dala vladi nova pooblastila, ki jih niso uporabili več kot dvajset let in so jih potem uporabili v nasprotju z interesi staroselcev.

Ključne besede: pravni proces, staroselci, referendum, sporazum

Anyone visiting Australia for the 2000 Olympics, who sought to learn how Australia was managing ethnic relations with its indigenous population, need only turn their attention to particular features of their surroundings: the prominence of indigenous Australians in the Olympic opening ceremony; an Aboriginal tent embassy in a city park; an Aboriginal media centre aimed at informing foreign media (20,000 reporters) of how Aboriginal Australians live; press coverage of the process of Reconciliation.

This year has seen unprecedented activity on a number of diverse positions on Aboriginal entitlement, obligation from the non-indigenous population, the historical facts, responsibility for the present disadvantage of Aboriginals and the best way of redressing it. Parliament, newspapers, radio talk-back, television documentaries, and public gatherings have debated facts surrounding the stolen generation, the Prime Minister's refusal to apologise to the Aboriginal people, a UN committee's criticism of Australia's actions over its indigenous population, Australia's immediate withdrawal from that committee system, the continuation of mandatory sentencing, and Aboriginal disadvantage in life expectancy, health, imprisonment, especially in comparison with the indigenous peoples of Canada, New Zealand and the USA. Policy on Native Title, Land Rights and a veto on mining exploration on Aboriginal land is undergoing change and has led to the resignation of the shadow Minister for Aboriginal Affairs.

On the 28th of May 200,000 people marched across Sydney Harbour Bridge in a gesture of solidarity with the Aboriginal cause. That was just one of over one hundred and seventy items in the Reconciliation Events Calendar for May-Jun 2000 in the Sydney area. A small sample of activities (about 30%) includes the following: music and song & dance which explores the conflict & sadness of a convict past, the suffering and survival of Aboriginal people, the grandeur and wildness of the landscape and the voices of animals; indigenous dance groups; documentaries and dramas dedicated to indigenous issues; vigil honouring the stolen generations; Journey of Healing 2000 Concert; student rally re mandatory sentencing; Journey of Healing Fire Ceremony; Indigenous Film Festival: Sand to Celluloid; Series Biennale Symposium "Truth and Lies"; unveiling of the Aboriginal Flag Plaque; art history lecture "Mythologising the Landscape". Another thirty similar events took place all over Australia. They and others are listed on a calendar of events (Reconciliation Events Calendar 2000)

Public support for Reconciliation is near universal, certainly over 90% and comparable to the mood in 1967 when over 90% of Australians supported a referendum to enable the federal government to pass legislation that would advantage Aboriginals. It is near impossible to find anyone to speak against Reconciliation, and it is just as rare to find anybody able to adequately explain what it is. Not for

the first time, the Australian public, the media, opinion leaders, and Aboriginal groups are solidly behind a worthy cause, this time, Reconciliation.

The official program of Reconciliation came into existence because in 1988 the then government found itself enmeshed in a political problem of its own making: in June 1988 the then Prime Minister, Bob Hawke committed his government to completing a treaty with Aborigines. It was a solemn promise and included a completion date, 1990. Aboriginal leaders have never ceased working towards a treaty in international forums. They shared in the development of the UN Draft Declaration on the Rights of Indigenous Peoples. Indigenous representatives have engaged with national policy-makers and legislators to insist upon recognition of the right of self-determination. They view Canadian treaties as possible models for Australia.

The Prime Minister was well practiced in reneging on his promises, usually by saying that circumstances had changed and therefore it would be foolish to act against the public interest just for the sake of keeping a promise, but this promise had attained such a level of expectation that it couldn't just be abandoned without serious political damage.

Instead of directly addressing the question of a treaty the government embarked on a properly structured and funded ten year plan to improve relationships between Aboriginal and Torres Strait Islander peoples and the wider Australian community. In 1991 the Australian parliament established the Council for Aboriginal Reconciliation with unanimous cross-party support. The Council for Aboriginal Reconciliation is a statutory authority (Council for Aboriginal Reconciliation Act 1991). The legislation stipulates that the Council will cease to function on 1 January 2001 - the centenary of Australian federation.

The Council's vision statement for the society it hopes to see at the centenary includes:

a united Australia which respects this land of ours, values the Aboriginal and Torres Strait Islander heritage and provides justice and equity for all.

The preamble to the Council for Aboriginal Reconciliation Act 1991 provides at least a hint of some kind of formal relationship, but not a treaty. The relevant statements are:

there has been no formal reconciliation between Aborigines and Torres Strait Islanders and other Australians; and
by the year 2001, the centenary of Federation, it is most desirable that there be such a reconciliation

The only mention of a treaty appears in the Council's documents brochure where it explicitly states, "The document of reconciliation is not a treaty, nor will it prevent discussion of a treaty." The word 'Reconciliation' is not used in its primary meaning. The Shorter Oxford dictionary gives eight meanings for 'reconcile' and it isn't until the seventh and eighth that it has a meaning like what is in the 1991 act. The first six involve restoration to some pre-existing state or relationship.

There is also some uncertainty to what extent Reconciliation is a process or an outcome. A survey of 58 university students, who were asked "What is Reconciliation?" produced a wide range of answers which showed that ten years of publicity has penetrated their consciousness. Answers related to recognising rights, acknowledging past injustices, bringing people together, understanding prior ownership, valuing native culture, and accepting the need to eliminate economic disadvantage.

But there is precise instruction on how the ten-year Council for Aboriginal Reconciliation Act is to be applied in terms of its rationale, functions, structure, and funding.

Some of Council's functions, as set out in the legislation (Council for Aboriginal Reconciliation Act 1991), are:

- (a) to undertake initiatives for promoting reconciliation, particularly at community level;
- (b) to promote, by leadership, education and discussion, a deeper understanding of the history, cultures, past dispossession and continuing disadvantage of Aboriginal and Torres Strait Islander peoples and of the need to redress that disadvantage;
- (c) to foster an ongoing national commitment to cooperate to address disadvantage;
- (d) to provide a forum for discussion by all Australians of issues relating to reconciliation, and of policies to be adopted by Commonwealth, State, Territory and local governments to promote reconciliation; and
- (j) to develop strategic plans that include a statement of the Council's goals and objectives in the promotion of the process of reconciliation and of its strategies for achieving them, together with indicators and targets for measuring the Council's performance in relation to those goals and objectives.

The Council's Secretariat is located in the Department of Prime Minister and Cabinet. Staffing information is included in the Department's Annual Report. The salary costs of the Aboriginal Reconciliation Unit come from within the sala-

ries allocation of the Department. In 1992-93, its first full year of operation, the Council had a budget allocation of \$4m.

The end product of the Council's work is to be a Declaration for Reconciliation together with recommendations for implementation to be presented to the Minister who is required to deliver a copy to each House of the Parliament within 15 sitting days of that House after they are made to that Minister.

In this tenth and final year of the Council for Aboriginal Reconciliation Act 1991, the Council has produced the "Draft Declaration for Reconciliation":

Speaking with one voice, we the people of Australia, of many origins as we are, make a commitment to go on together recognising the gift of one another's presence.

We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of traditional lands and waters.

We respect and recognise continuing customary laws, beliefs and traditions.

And through the land and its first peoples, we may taste this spirituality and rejoice in its grandeur.

We acknowledge this land was colonised without the consent of the original inhabitants.

Our nation must have the courage to own the truth, to heal the wounds of its past so that we can move on together at peace with ourselves.

And so we take this step: as one part of the nation expresses its sorrow and profoundly regrets the injustices of the past, so the other part accepts the apology and forgives.

Our new journey then begins. We must learn our shared history, walk together and grow together to enrich our understanding.

We desire a future where all Australians enjoy equal rights and share opportunities and responsibilities according to their aspirations.

And so, we pledge ourselves to stop injustice, address disadvantage and respect the right of Aboriginal and Torres Strait Islander peoples to determine their own destinies.

Therefore, we stand proud as a united Australia that respects this land of ours, values the Aboriginal and Torres Strait Islander heritage, and provides justice and equity for all.

The Council's plan for the continuation of the reconciliation process beyond 2000 requires the recognition and protection of the Declaration of Reconciliation in the constitutions of the Commonwealth, States and Territories and necessitates the foundation of a statutory body, to be called RECONCILIATION AUSTRALIA, to oversee the implementation of its "National Strategies to Advance Reconciliation". The actual strategies are very detailed. What follows is a very brief selection from a summary of a draft:

A National Strategy for Economic Independence will facilitate greater economic independence and self-reliance in the lives of Aboriginal and Torres Strait Islander peoples. It seeks to empower Aboriginal and Torres Strait Islander peoples and promote their human dignity. This strategy recognises that economic empowerment will not occur through welfare programs. The strategy will achieve its greatest success when it is built on partnerships between all sectors. This strategy would include:

1. better access to capital, business planning advice and assistance;
2. increased networking and mentoring opportunities;
3. better access to training and development opportunities;
4. promotion and encouragement of Aboriginal and Torres Strait Islander small business;
5. greater strategic and integrated regional economic development plans;
6. fostering partnerships with the business community; and reform of current government economic and funding programs for Aboriginal and Torres Strait Islander peoples.

A National Strategy to Address Aboriginal and Torres Strait Islander Disadvantage aims for better outcomes in health, education, employment, housing, law and justice. Its objective is to achieve social and economic conditions for Aboriginal and Torres Strait Islander peoples which are the same as those enjoyed by other Australians. This strategy will get better outcomes from government and non-government services. It builds on the National Strategy for Economic Independence.

Reconciliation requires practical and real steps to target the disadvantage experienced by Aboriginal and Torres Strait Islander peoples as a result of past injustices. Statistics show that they are the poorest, unhealthiest, least employed, worst housed and most imprisoned Australians.

This strategy will be based on partnerships between Aboriginal and Torres Strait Islander peoples, governments, the business sector and service organisations. It will set out mechanisms to measure progress and report publicly.

A National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights will be based on the principles that all Australians should share equal rights and responsibilities as citizens; should be able to participate, as they choose, in all levels of decision-making on matters which affect them and their communities; and should enjoy equal social and economic conditions, according to their aspirations.

The strategy will recognise the unique status of Aboriginal and Torres Strait Islander peoples as the original custodians of Australia, their continuing cultures and heritage, and their rights under the common law. It will recognise the unique relationships of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters and the importance of traditional land management knowledge in sustaining the natural environment. The strategy will also recognise Aboriginal and Torres Strait Islander peoples' continuing aspirations for greater recognition and self-determination within the framework of the Australian Constitution, and will propose strategies for increased representation in Australian parliaments.

A National Strategy to Sustain the Reconciliation Process will build on the existing peoples' movement for reconciliation. It will promote knowledge and understanding of the history of Australia's colonisation and will assist Australia to celebrate the diversity of the origin of its peoples. It will acknowledge the cultural, social and economic contributions made by Aboriginal and Torres Strait Islander peoples to the nation. The strategy will describe how governments at all levels, organisations and community groups can recognise and adopt appropriate protocols, as well as establish symbols of reconciliation that reflect our shared history and culture.

Public support for this process of reconciliation appears to be in excess of 90% but without any comprehension by the public of the actual means of achieving it, but still believing that reconciliation will compensate for past injustices over dispossession, the stolen generation, the lack of an official apology, and will put other things right

Together with the denial of the existence of a stolen *generation*, the Prime Minister's refusal to make an official apology to Aboriginals has been the most vexing issue. Australians ask if Bill Clinton can apologise for Tuskegee, Tony Blair for the potato famine, and Abdurrahman Wahid for the East Timor atrocities, why can't John Howard make an official apology? He has made a personal apology

but says that it is inappropriate for this government to apologise for something it did not itself do.

State Premiers and the heads of churches have made their public apologies and the leader of the opposition has criticised the Prime Minister. There is no doubt about what many people think about the desirability of a public official apology: they have been signing their names in a number of "Sorry" books. At the same time it must be noted that on the question of an official apology public support is well below 90%. The Prime Minister's defenders say that an official apology would automatically make the government liable for massive compensation. Others say that it could be an apology with no obligation attached as per Clinton, Blair, and Wahid. Still others insist that an apology without compensation would be meaningless. The Prime Minister's latest stance is that even if people now wanted him to apologise, he can't do it because nobody would believe it was sincere.

There is no doubting that Reconciliation is a public relations triumph. When an Aboriginal athlete won the 400m race in the Olympics the Prime Minister said that it will mean a great deal for reconciliation, and the Leader of the Opposition said that it was 400m of reconciliation. The Olympic opening ceremony, with its tribute to Aboriginal culture and history, was widely praised as a contribution to reconciliation and gave the games a new significance. Months before the games there had been expectations that Aboriginal activists would disrupt them and there was a lot of negotiating to prevent this. The compromise position was that there could be demonstrations but not disruptions. After the opening night even demonstration was out of the question.

Given the idealistic phrases of pledging to stop injustice and respecting values, nobody can be found to speak against Reconciliation any more than speak against motherhood. Nevertheless there are doubters, especially in Aboriginal communities. They were asked to participate but the idea didn't come from them, and they saw it as something that could make non-indigenous Australians feel less guilty, without making any difference to the lives of Aboriginal Australians.

Aboriginal leaders did see some value and hoped that some kind of treaty would be drafted. Aboriginal Senator Aden Ridgeway encouraged Aboriginal participation in Reconciliation, describing it as the 'small chink in the armour of white ignorance' with the hope that it might contribute to future changes to the Australian Constitution.

At the community level, where people are acutely aware of the theft of children, land and culture, they firmly believe that it is the other side that should be doing the reconciling. In the words of one Walgett Community member, 'What is there to reconcile, and why should the onus be on us to reconcile, when it was them that did the damage?'

Their leaders tell them that Reconciliation will bring benefits further down the track, but in the meantime, if they don't agree to participate, Aboriginal people will be seen to be divided amongst themselves and ineffectual.

There is no one person who is the leader of Aboriginal Australians. The aforementioned Aden Ridgeway is Senator in the Australian Parliament and his word carries weight. Heads of ATSIC (Aboriginal and Torres Strait Islander Commission), who administer a budget of \$1.3bn and are now elected by Aboriginals are prominent spokespersons in the media, as are other prominent Aboriginals. Nor is there any equivalent of the Australian Parliament. Aboriginals vote for the same candidates as other Australians.

The Australian Institute of Aboriginal and Torres Strait Islander Studies has researched the basis on which certain members of Aboriginal communities became leaders (Cranney and Edwards 1998: p15). Relevant factors were membership of larger family groups, bloodline, gender, age groupings, and expertise on some issue. Some of the more common processes include the following:

1. one who is already a 'cultural leader' is groomed or nominated;
2. someone is thrust into the role by peer pressure and expectation;
3. one is seen to be an expert on a subject or issue;
4. one is elected as a local government representative;
5. one is perceived as a role model and is respected for honesty and integrity;
6. one is publicly in the forefront of media attention;
7. someone has been appointed as a government advisor;
8. some are assertive and good at self-promotion.

The above applies to the roughly 15% of Aboriginals who live in identifiable communities. It was in the mid 1970s that assimilation, as government policy, was abandoned and it was decided that the community was to be the unit for delivering services and welfare. In NSW the state government divided the state into twenty three Aboriginal Land Councils which crossed traditional kinship structures not dissimilar to the way colonial powers drew lines on maps in Africa slicing through traditional tribal lands. This made it very hard for the new communities to create leadership structures through which the state would deliver the services and, not surprisingly, produced a few malfunctioning community administrations.

One assumes that a piece of territory is an essential component to a functioning treaty or at the very least that there is no ambiguity as to which side a participating member would belong. The vast majority of Aboriginal Australians are con-

centrated in the same places as the total population, the east coast and to a lesser extent the south west coast. About 50% of Aboriginals are totally dependent on welfare and this would be more true of those living in remote communities. 64% of Aboriginal couple families are unions between Aboriginal and non-Aboriginal partners and this would be more true of those living along the coasts.

The family structures and distribution of the indigenous population and have a bearing on how a treaty might be implemented. One scenario favoured by the head of ATSIC is that a geographic section which already encompasses a lot of Aboriginal land is to come under its own Aboriginal laws and no longer depend on the larger economy. The economic plan is to do without the \$2.3bn spent on Aboriginal Australians at present but to take charge of the \$4bn royalties that mining companies pay the government for mining on Aboriginal land.

What has not been addressed is the status of those Aboriginal Australians who live amongst concentrations of non-indigenous people. What family law would apply to the 64% who have non-indigenous partners? The lifestyle of the 50% who are not totally dependent on welfare and who live along the coasts are not radically different from the rest of the population.

A recent demographic phenomenon between 1991 and 1996 is that people who had identified themselves as non-indigenous, changed their self identification. This was common to all states and territories but was most pronounced in Tasmania and in Canberra. Tasmania has had no full-blood Aboriginals since 1876 and the 1991 census records Tasmania having 9,461 people identifying as Aboriginals. The number shot up to 15,322 in the 1996 census, an increase of over 60%. In Canberra the corresponding

numbers were 1,616 and 3,058, an increase of 89%. The federal public service has a policy of employing indigenous Australians and that would have contributed to the increase (Australian Bureau of statistics 2001).

The disparity and geographic dispersion into the wider community of all those who identify themselves as indigenous Australians is so great that it is hard to see how all of them could be beneficiaries of a single treaty. There are fairly homogenous groups, and some of them are economically viable through the resources of their own land, whereby a treaty arrangement could be beneficial to them, but so far all the talk has been of a single treaty between the indigenous population and the rest.

The Prime Minister is totally opposed to any kind of treaty whatever. In a document he wrote as Opposition Leader are the words:

The Liberal and National Parties remain committed to achieving policies which bring Aboriginal people into the mainstream of Australian society and give them equal opportunity to share fully in a common future with all other Australians. Consequently we are utterly opposed to the idea of an Aboriginal treaty ... It is an absurd proposition that a nation should make a treaty with some of its own citizens.

As recently as 27 July 2000, ATSIC Chairman, Geoff Clark, addressed the 18th Session of the Working Group on Indigenous Populations in Geneva. His address begins:

The Aboriginal and Torres Strait Islander Commission (ATSIC) supports the proposition that Australia must sign a treaty.

We reject unfounded claims from the government that a treaty is not possible.

The stark truth remains that in Australia the Indigenous Peoples have been treated unequally in the past, and are kept unequal in the present.

We are unable to protect our interests as Peoples because we are denied equal political rights, including the right to self determination.

Two years ago, the Aboriginal Peoples and Torres Strait Islander Peoples of Australia turned to the United Nations to fight a critical case involving racial discrimination by the Australian Government.

Subsequently, the *Committee on the Elimination of Racial Discrimination* (CERD) has, on three occasions in 1999 and 2000, determined that the Native Title Act, as amended in 1998, is racially discriminatory.

The Committee has recommended that the amending legislation for Native Title be suspended and that the government require our informed consent for any replacement legislation ...

Indigenous Australians have been active in international fora on indigenous movements since the early 1970s. They are well aware of how other indigenous movements negotiated treaties but are thwarted by the present lack of any mention of indigenous Australians in the Australian Constitution. Their submissions to the Council for Aboriginal Reconciliation request such constitutional change.

It could be argued that the activities of indigenous Australians with UN committees have been all too successful. They took some of their concerns to the body charged with supervision of the International Convention on the Elimination of All Forms of Racial Discrimination, the so-called "CERD Committee which asked the Australian Government to explain how their amendments to the *Native Title Act 1993* (NTA) are consistent with Australia's obligation under the *International*

Convention on the Elimination of All Forms of Racial Discrimination. The Australian Government has this year withdrawn its participation in that and other UN committees.

Australia's Prime Minister has been promoting what he calls "practical reconciliation", by which is meant systematic improvements to educational, health, and economic disadvantage. Such improvements are a worthy step in the right direction but the danger is that the Prime Minister believes that no more is required apart from speeches aimed at those who don't appreciate how much has been achieved. In fact progress has been painfully slow. There are a number of explanations, one of which is that some non-indigenous Australians are very sensitive to Aborigines receiving any government service or advantage for they don't qualify. There is a general sentiment in the Australian community that everybody should have "a fair go" and anything less than that is "unAustralian".

A new political party, One Nation, with almost no policies campaigned against welfare that was race based instead of needs based and attracted 23% of the vote in a Queensland state election, as well as winning its founder a federal seat in parliament. Public opinion polls show that Australians see compensatory welfare to Aborigines as unfair, and they are thereby likely to vote against a party advocating that.

Australia's Governor-General, Sir William Deane, said that Aborigines' standard of living should be equal to that of other Australians, and many have agreed with him. Australia is far from being a classless society. 5% of people own 48% of the wealth and there are many living below the poverty line. There is a prosperous middle class outnumbered by what we call "the working poor" and below them the unemployed and the homeless.

If we decide there must be equality of living standards between Aboriginal communities and the non-indigenous living standards in the capital cities then there arises the question of whether the equality is to the higher standards of the better off city dwellers or equality with the less well off living in the less affluent suburbs.

Any government initiatives that succeeded in raising Aborigines' living standards would immediately produce an outcry from any non-Aborigines left behind and One Nation would waste no time letting everybody know. This alone could be enough for the government to do no more than pay lip service to promoting economic advancement for Aborigines.

The present ten-year campaign for reconciliation is comparable to the ten-year campaign for the constitutional referendum of 1967 to enable the Australian Parliament to pass legislation to benefit Aborigines (Marr 2000: pp1-5). Where the campaign for reconciliation is run by the Council for Aboriginal Reconciliation,

in 1967 the ten-year referendum campaign was run by the Federal Council for Advancement of Aborigines and Torres Strait Islanders (FCAATSI). Prominent Australians on CAR now were mirrored by equally prominent Australians, both black and white, on FCAATSI including a future Premier, a future Governor, artists, scientists, and women at the center of it. Today's demonstrations and events had their antecedents in the earlier campaign; participants saw themselves as part of a world movement against injustice so that at the time of the Freedom Ride into America's deep south, Australia had its own Freedom ride in October of 1965 when Charles Perkins led a busload of 29 students to a distant NSW country town to draw attention to the de facto segregation there.

Despite the overwhelming public support for a change to the Constitution, the Prime Minister since 1949, Robert Menzies, refused to contemplate making special laws for Aborigines on the grounds that it would be discriminatory. He was replaced by Harold Holt in 1966, who, in keeping with the spirit of the times, had Australia sign the International Accord for the Elimination of All Forms of Racial Discrimination, abolished the White Australia Policy, and yielded to the overwhelming public pressure for that referendum.

The natural constitutional amendment would have been to empower the Commonwealth to legislate for the benefit of Aborigines and it was FCAATSI's to give the Australian Parliament the power to legislate for "the advancement of the Aboriginal natives of the Commonwealth". Instead the Prime Minister and Cabinet took a more circuitous path. The original Constitution anticipated a possibility of legislating to remove other races from Australia but had to make an exception of Aborigines. The relevant section is 51(26) which stated that the Commonwealth is empowered to make laws with respect to "the people of any race, other than the Aboriginal race in any state, for whom it is deemed necessary to make special laws".

The Holt government drafted the referendum question to ask if the voters agreed to excise the eight words "other than the Aboriginal race in any state" from s51(26). Protests at the wording were brushed aside because everybody understood what was meant and public support guaranteed a positive vote.

The nation celebrated the constitutional change and Australians congratulated themselves for their compassion and generosity of spirit towards Australia's Aborigines. The government sought advice on suitable policies. And that was it, for more than two decades. Not a single piece of legislation was passed.

We now know, from the recent release of the 1967 Cabinet papers, that Cabined had required that a condition for allowing the referendum to proceed was that the Federal government would not use their new powers but leave the States to legislate over Aborigines.

The new power wasn't used until the 1990s. On one occasion in 1997 it was actually used against an Aboriginal group who sought to use the Heritage Act against the building of a bridge. The Australian Parliament passed legislation preventing them. There was a High Court challenge on the grounds that the intention of the 1967 referendum was for legislation to benefit Aboriginals, not harm them. The High Court ruled that it was bound by the literal meaning of the words to which neither benefit nor disadvantage were relevant. The Aboriginals lost. (*Kartinyeri v Commonwealth* [1998] HCA 22; 195 CLR 337; 152 ALR 540; 72 ALJR 722(1997))

One can't help noticing an imbalance between the celebratory rhetoric and the practical achievements of recent milestones in Aboriginal advancement. The much celebrated High Court Mabo decision in 1992 overthrew the doctrine of *terra nullius*, the convenient fiction that the original Aboriginals were without laws or significant social organisation. While the judgement was a cause for celebration, many Aboriginals questioned why it had to take a High Court decision to prove that they had been there first. The High Court did not go far beyond recognising the Aboriginals' original sovereignty and stipulated that the Crown's acquisition of sovereignty can not be questioned in municipal Australian courts, and furthermore that indigenous assertions of sovereignty are nonjusticiable.

Historically not all Australians had agreed with *terra nullius* and it was contested in 1889. The case was taken all the way to England's Privy Council which determined that Australia was "a tract of territory practically unoccupied without settled inhabitants". This very judgement was used in a Northern Territory Supreme Court case to deny the Yirrkala Aboriginals common law rights to their traditional lands. The Mabo decision has put a stop to that kind of thing in the future.

At the end of the ten-year Reconciliation process just after the 2000 Olympics Australians are already congratulating themselves on how many indications point to the success of Reconciliation. All we need now for the Federal and State parliaments to make the constitutional changes, adopt an Aboriginal Bill of Rights and pass the legislation that will implement the strategies that will address Aboriginal health, education, and economic disadvantage. Main obstacles are that the Prime Minister thinks that Reconciliation is almost complete anyway and any changes will have to be made in such a way that they don't give Aboriginals anything that other economically disadvantaged Australians don't get.

Some years later, in 2007, and a few months before a federal election, the Prime Minister reacted to public disquiet and media response, to the release of a report on the incidence of child sexual abuse of Aboriginal children. With bipartisan support from opposition parties, and only a few days negotiation with state governments, Aboriginal communities were visited by army, police, and medical

units. There were plans to further limit the availability of alcohol in Aboriginal communities and other measures such as encouraging school attendance. But not a word about reconciliation from either side of politics.

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