

OPENING ADDRESS

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BEFORE BEING ELECTED TO THE FEDERAL PARLIAMENT, I SPENT FIVE YEARS in Mount Isa as the solicitor retained by the Aboriginal and Torres Strait Islander Legal Service. This service covers a large area north to Mornington Island, south to Birdsville, east to Julia Creek and west to the Territory border.

As a solicitor retained by the Aboriginal Legal Service I heard the individual life stories of many clients: whole families who had died of introduced diseases such as measles; children hiding in caves for weeks at a time to avoid being taken from their families; the exploitation of Aboriginal stock workers who were paid nothing for developing the cattle industry in the north, and tragic abuse and rape of Aboriginal and Torres Strait Islander women. Just about every client had a family history involving early death and great suffering. Clearly there has been a tragic lack of justice in relation to all aspects of the relationship between Aboriginal and Torres Strait Islander people and white Australia.

The Royal Commission into Aboriginal Deaths in Custody recognised that it is this history of suffering, much of it very recent, that is the primary cause of the current disadvantaged position of Aboriginal and Torres Strait Islander people.

Many of the families and friends of those whose deaths were investigated by the Commission are upset and angry that the Commission did not find any death to be the result of deliberate unlawful violence or brutality. This finding is difficult to accept, however, as the Minister said in his Ministerial Statement announcing the Government's response to the Report—the Commission made a finding of much deeper, long-term significance.

Those who died were not victims of isolated acts of violence or brutality. Rather they were victims of entrenched and institutionalised racism and discrimination. Their deaths were the tragic consequence of two centuries of dispossession, dispersal and appalling disadvantage. (House of Representatives Hansard, 31 March 1992, p. 1472).

The Royal Commission identified and examined the factors which combined to explain the level of disadvantage, both economic and social, suffered by many Aboriginal and Torres Strait Islander people in Australia today, which has resulted in the over-representation of Aboriginal people in prisons and in police custody. It has focussed national and international

attention on the tragedy of Aboriginal deaths in custody and a level of institutional racism that should be the shame of all Australians. One of the most telling statistics to come out of the Royal Commission is the fact that Aboriginal and Torres Strait Islander people are the most gaoled people per head of population in the world. This is a damning indictment of our justice system.

The Federal Government has supported 338 of the 339 recommendations of the Royal Commission and last month announced a \$150m package over five years to implement the first stage recommendations relating to law and justice issues, prevention of alcohol and substance abuse, and the monitoring of the implementation of agreed recommendations.

Included in this paper are some of the author's experiences with the Aboriginal and Torres Strait Islander legal service in Mount Isa that highlight the need for the Commission's urgent implementation of recommendations concerning law and justice, and wider issues of economic and social disadvantage. Now at last the will is there at the political level to provide the funds necessary for Aboriginal and Islander people to take control and address law and justice issues in their own communities.

The British Criminal Justice System and Aboriginal and Torres Strait Islander Communities

It is impossible to avoid questioning the validity of the imposition of the British criminal justice system on Aboriginal and Torres Strait Islander communities in the first place. The criminal law may appear to function "justly" in Canberra for example, but too often it becomes dysfunctional in remote Aboriginal and Torres Strait Islander communities leading to situations that are far from "just".

The "Gulf circuit" happened once a month and supposedly took justice to Mornington Island, Normanton and Burketown on a small charter flight. Until recently, Aboriginal defendants from Doomadgee, a town of about 1000 people, had to attend court in Burketown. This often meant a two-hour ride in the back of a police utility truck down a corrugated and dusty track. Burketown's population is well under 200. After court, the clients who were lucky enough not to be imprisoned were left to find their own way back to Doomadgee while the police vehicle drove back empty.

On my initial Gulf trip, "the travelling justice show" landed first at Mornington Island. The charter flight carried the magistrate, the prosecuting police sergeant and me. It would have been difficult to convince people watching this group land at the Mornington Island airstrip and clamber, sweating, into the waiting police vehicle which took us to court, that we were not all the best of mates.

The question of our independence, as three white men, arriving in a community where everyone was black except the police, the teachers, the nurses and the shire clerk, became even more unconvincing once we got to the courthouse, (and I use that term very loosely because it was simply the Mornington Island police station with a desk moved to another position.).

My independent role in the proceedings became a little clearer once I was down interviewing my clients under the tree outside the police station. The police called this tree the "guilty tree" because they believed that everyone who sat under it was obviously guilty. With temperatures around 42°C, this was not exactly the ideal arrangement for client interviews. Furthermore, it did not help having the magistrate pacing up and down the police station verandah with the prosecutor, suggesting that I hurry up as it was nearly lunchtime.

Often clients would make allegations of police brutality, brutality that actually took place in the police station—in fact, in the same room that was now the courthouse, supposedly dispensing independent justice. Sometimes the policeman against whom the allegation was made would be acting as the court orderly.

It was a bewildering experience for most of the clients, made even more difficult by the fact that many spoke English as a second language. I doubt that any of my clients would have seen the magistrate to be impartial and independent from the police.

Many of my clients also had difficulty coming to terms with the concept of judgment by your peers being the cornerstone of our justice system. Again this was, and is perfectly understandable. If an Aboriginal or Torres Strait Islander client chose to go to trial before a higher court, or was committed for trial, that trial took place in Mount Isa. More often than not the client had no way of getting there and was brought down under a warrant of arrest. This prejudiced the defendant from the outset.

I do not recall ever having an Aboriginal person on a jury for the trial of an Aboriginal person in the five years, that I was with the Aboriginal Legal Service.

Juries are drawn from those residents who live within a radius of 10 to 13 km from the post office in the town where the district court sits. The demographic profile of the citizens living in the shadow of the lead smelter in Mount Isa is profoundly different from that of people living near the post office agency at, for example, Doomadgee or Mornington Island.

Invariably Aboriginal and Torres Strait Islander defendants in north west Queensland were defended by a white lawyer and prosecuted by a white police officer or barrister, judged by twelve white urban dwellers or a white magistrate or judge, in a courtroom of white officials. The formalities and jargon of the courtroom are difficult enough for any defendant to fathom, and deliberately so, let alone a juvenile who has been flown down from Mornington Island for the first time.

On one occasion I was acting for an Aboriginal client in a civil matter about a car accident. We had an eye witness to the accident that gave us a watertight case. Our witness was an Aboriginal man from the Camooweal area. I spoke to him briefly before he went into court to give evidence explaining that he just had to tell the court what he saw when the accident happened. When he was called to give evidence he walked up to the witness box, saw all white faces looking at him, turned to the magistrate and said, "I plead guilty, Sir".

Commissioner Johnston QC was understating the case when he said in volume 4 of the *National Report* that

Genuine differences, bewilderment and alienation from the rules and administration of the non-Aboriginal legal system do exist. This has great implications for the achievement of justice and the attainment of order in the broadest sense (Royal Commission into Aboriginal Deaths in Custody 1991a, p. 98).

Cultural differences and alienation add up to make the criminal justice system far less just for Aboriginal people.

An extreme case of the absolute failure of the justice system was the gaoling of Kelvin Condren, a young Aboriginal man, for a crime he did not commit in circumstances that are possibly as outrageous as those endured by Lindy Chamberlain.

Kelvin Condren was convicted of the murder of a woman in Mount Isa and received a life sentence. At the time, evidence was in fact available that a man in gaol in Darwin had confessed to the murder and that Kelvin was in police custody at the time of the offence. After years of lobbying by his family, solicitors and friends, Kelvin was finally released from Stuart Creek gaol in Townsville. He had been in gaol for some seven years for a crime he did not commit.

Kelvin was a victim of institutional racism, of the underlying racism of the police, the courts, the media and the community at large. He was a victim of entrenched underlying racist attitudes in much the same way that Lindy Chamberlain was the victim of underlying sexist attitudes.

Each death in custody investigated by the Royal Commission represented a tragic failure of the criminal justice system. In about 1987 I acted for the family of a man who died in police custody at Doomadgee, Alistair Riversleigh (the author notes in passing that his family have no objection to the speaking of his name). Riversleigh hanged himself in police custody after he displayed an apparent intention to hang himself with a garden hose in his own home. He was arrested and put in the lockup for his own protection by two Aboriginal community policemen and was then left unsupervised in the watch-house. Those community police had not received any formal training in policing. The report says:

It should have been readily apparent to a trained police officer that a person in Riversleigh's emotional state who had already threatened to commit suicide was at risk of harming himself. The possibility of this potential being realised should have been even more apparent following the publicity given to three hangings in the Yarrabah Watch-house in the three and half months immediately preceding Riversleigh's death. The fact that the two Aboriginal policemen did not appreciate that Riversleigh was at risk of harming himself can in no way be regarded as a personal criticism of them but rather as an indictment on the system which allowed untrained and unsupervised Aboriginal policemen to perform police duties. Had the police at Doomadgee been properly trained and supervised, Riversleigh's death should not have occurred (Royal Commission into Aboriginal Deaths in Custody 1991b, p. 21).

Despite these comments and, indeed, the many specific recommendations of the Commission to address this issue, deaths such as Alistair's are still occurring.

On Mornington Island last year a young man died in the watch-house in circumstances that could have been avoided had the Queensland police concerned implemented the interim recommendations of the Commission, including recommendations to provide formal training for Aboriginal police and regular adequate checks of people in custody. At the Inquest it came out that not one of the State police officers involved had read a word of the Interim Reports of the Royal Commission.

In April this year at the inquest into the death of a young man who died at Lotus Glen prison near Mareeba, evidence revealed a similar absence of knowledge by the custodians of the contents or recommendations of the issues raised by the Royal Commission.

Every day, both in court and out of court, my experiences in north west Queensland made it painfully clear that justice did not work the same way for Aboriginal and Torres Strait Islander people as it did for non-Aboriginal people.

Slowly things are changing:

- n The appropriateness of the application of much of the white criminal justice system in Aboriginal and Torres Strait Islander communities is at least on the agenda as a result of a Royal Commission recommendation urging governments to report on the progress of a reference by the Australian Law Reform Commission (ALRC) into the recognition of Aboriginal customary law.
- n The Magistrates' Court now flies into Doomadgee saving clients a bumpy ride and an impossible walk back from Burketown.
- n Court on Mornington Island is now held in the Shire hall and not the police station. It seems that the defence and the prosecution no longer fly around the Gulf on the same plane, and have not done so for some time.
- n The Queensland State Government is currently reviewing aspects of the process used to select jurors.
- n Kelvin Condren has been freed and is applying for compensation.

However, Aboriginal and Torres Strait Islander people are still dying in custody in circumstances that could have been avoided had the recommendations of the Royal Commission been implemented.

This conference provides a well needed opportunity for people involved in issues of Aboriginal justice to get together and get the momentum going.

The Federal government has committed the funds to implement a \$150m package of reforms. While that is a commitment I am proud of, and I would like to see more of the same from the States, what we need now is the will at

the political and general community level to see the implementation process through, and urgently.

One aspect of the response by governments to the Royal Commission is the decision to fund the recommendations relating to Aboriginal legal services. A total of \$50.4m has been made available to Aboriginal legal services throughout Australia over the next five years to allow the services to fulfil 27 recommendations of the Royal Commission relating to their work.

The governments' responses specifically identify the important continuing role of the services in law reform issues—or a role which has remained largely unfulfilled because of the lack of resources. Similarly, there will be provision for the continuing role of Aboriginal legal services in representing families of deceased persons.

Just as important, if not more important than these initiatives are the recommendations concerning cultural awareness training for judges, judicial officers and court staff; a national education legal service field officer training course; community education and training programs for Aboriginal and Torres Strait Islander workers; the establishment of an Aboriginal interpreter accreditation program; and in-service training for police about Aboriginal Australia.

Three-quarters of the \$150m funding made available in the first round will be channelled to community controlled Aboriginal and Torres Strait Islander organisations through ATSIC and is testimony to the Government's commitment to ATSIC as the vehicle for Aboriginal and Torres Strait Islander empowerment and self-determination.

A second package of measures dealing with young people, education, employment and economic development will hopefully be announced by the Minister shortly. It has not been easy extracting money from the Treasury in the midst of a recession and with unemployment running at over 10 per cent. But the Federal Government is committed to funding the implementation of the recommendations of the Royal Commission. It is a shame that some of the state governments involved in the process have not been so forthcoming. It is also a shame that things like the question of superannuation for Community Development Employment Project (CDEP) workers has not been addressed in the current debate on the issue so far, although I have put it on the agenda. If we really want to ensure that our ageing population is financially secure in retirement, then those Aboriginal and Torres Strait Islander workers employed under CDEP should also be entitled to adequate superannuation.

Government Initiatives

One of the strong recommendations of the Royal Commission was that police jurisdictions would greatly benefit from the exchange of experiences at a national conference, involving Aboriginal community leaders and police, on Aboriginal/police relations.

Conferences such as this provide crucial opportunities for people who care about the future of the Aboriginal community in Australia to meet together and share their experiences and ideas.

Opening Address

I am sure that everyone here at this conference will benefit from the opportunity over the next three days to exchange ideas about how we can create a future where there is "justice" for Aboriginal and Torres Strait Islander people.

References

Royal Commission into Aboriginal Deaths in Custody 1991a, *National Report*, vol. 4, (Commissioner E. Johnston), AGPS, Canberra.

----- 1991b, *National Report, Regional Report of Inquiry in Queensland*, (Commissioner L.F. Wyvill), AGPS, Canberra.