COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Progress towards national reconciliation

TUESDAY, 24 JUNE 2003

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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Tuesday, 24 June 2003

Members: Senator Bolkus (*Chair*), Senator Payne (*Deputy Chair*), Senators Greig, Kirk, Scullion and Stephens

Substitute members:

Senator Ridgeway to replace Senator Greig for matters relating to the Indigenous Affairs portfolio

Senator Crossin to replace Senator Stephens for the committee's inquiry into progress towards national reconciliation

Participating members: Senators Abetz, Brandis, Brown, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Lightfoot, Ludwig, Mason, McGauran, Murphy, Nettle, Sherry, Stott Despoja, Tchen, Tierney and Watson

Senator Bartlett for matters relating to the Immigration and Multicultural Affairs portfolio

Senators in attendance: Senators Bolkus, Crossin, Kirk, Ridgeway and Scullion

Terms of reference for the inquiry:

To inquire into and report on:

1. Progress towards national reconciliation, including an examination of the adequacy and effectiveness of the Commonwealth Government's response to, and implementation of, the recommendations contained in the following documents:
    (a) Reconciliation: Australia's Challenge: Final Report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament;
    (b) the Council for Aboriginal Reconciliation's Roadmap for Reconciliation and the associated National Strategies to Advance Reconciliation; and
    (c) the Aboriginal and Torres Strait Islander Social Justice Commissioner's social justice reports in 2000 and 2001 relating to reconciliation.
2. That, in examining this matter, the committee have regard to the following:
    (a) whether processes have been developed to enable and require government agencies to review their policies and programs against the documents referred to above;
    (b) effective ways of implementing the recommendations of the documents referred to above, including an examination of funding arrangements;
    (c) the adequacy and effectiveness of any targets, benchmarks, monitoring and evaluation mechanisms that have been put in place to address Indigenous disadvantage and promote reconciliation, with particular reference to the consistency of these responses with the documents referred to above; and
    (d) the consistency of the Government's responses to the recommendations contained in the documents referred to above with the needs and aspirations of Indigenous Australians as Australian citizens and First Nation Peoples.

WITNESSES

Committee met at 5.31 p.m.

COOPER, Dr David Edward, National Coordinator, Australians for Native Title and Reconciliation

GLENDENNING, Mr Philip Patrick, National President, Australians for Native Title and Reconciliation

CHAIR—I declare open this public hearing of the Senate Legal and Constitutional References Committee inquiry into progress towards reconciliation. We have already held public hearings in Sydney, Melbourne, Darwin and Canberra, and we are due to report by 11 August. The terms of reference for the inquiry include examining the adequacy and effectiveness of the Commonwealth government's response to the recommendations of the Council for Aboriginal Reconciliation and the social justice reports of the ATSI Social Justice Commissioner. Of particular interest to the committee is term of reference 2(c) concerning the adequacy and effectiveness of any targets, benchmarks, monitoring and evaluation mechanisms to address Indigenous disadvantage and to promote reconciliation.

Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. You are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee does prefer to hear all evidence in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. If you wish to do so, we do need some notice of that.

I welcome the representatives of ANTaR. You have lodged submission No. 40 with the committee. Do you wish to make any amendments or alterations to that submission?

Mr Glendenning—No, but we would like to begin our evidence with some opening remarks.

CHAIR—I was just going to ask if you wanted to make some opening remarks. Please go ahead.

Mr Glendenning—Thank you, Mr Chairman, and thanks to the committee for offering us this opportunity this afternoon. I would like to begin by acknowledging the traditional owners of the land upon which we meet today, the Ngunnawal people. We acknowledge their prior ownership and custodianship of this place—it is an honour for us to be on their country—and thank the committee for providing Australians for Native Title and Reconciliation with the opportunity to speak to our submission.

We would like to offer a few brief remarks at this point that may assist the committee in its task. ANTaR is a unique organisation in a number of important respects in Australia. Firstly, it is mainly a non-Indigenous organisation that works in a close partnership role with Indigenous leaders and communities on the broad project of achieving justice for Indigenous Australians. That partnership began with the issue of native title following the High Court's Wik decision but quickly broadened to encompass reconciliation issues generally, particularly what has come to be referred to as Australia's 'unfinished business'. In approaching this partnership, ANTaR has sought to make space for the Indigenous voice to be heard for Indigenous leaders and peoples to put their case directly to the broader Australian community.

Secondly, ANTaR is a unique organisation and movement in that it exists because of the direct support of ordinary Australians—and I guess it is in that capacity that we are speaking today. ANTaR's success in mobilising and maintaining public support is evidenced by the over 300,000 Australians who have signed the Sea of Hands in support of reconciliation and Indigenous justice issues. ANTaR was also involved in facilitating and hosting the Sorry books, which were signed by an estimated one million Australians. The significant point here is that support from the public has held up as we believe support from the government has slipped over the past five years.

The main reasons for the high level of community support for ANTaR, we believe, are our close partnerships with Indigenous peoples and Indigenous leaders, and the fact that ANTaR is a fiercely independent organisation, free from political, governmental and corporate influence. ANTaR receives no government funding, and is funded instead from donations from ordinary Australian people. This is a significant achievement, given that ANTaR is a mainly voluntary organisation and does not have tax-deductible donation status.

As mentioned in our submission, ANTaR is one of only two national organisations whose major focus is that of reconciliation. The other, of course, is Reconciliation Australia. The two organisations maintain a close relationship and regard each other as providing vital complementary roles in supporting and furthering the reconciliation process. ANTaR is committed to continuing to work closely with Reconciliation Australia to improve the effectiveness of our activities and advocacy on reconciliation.

In mentioning this relationship, it is also worth emphasising the matter of resources for reconciliation, which was raised in our submission. We believe that the lack of resources is a significant impediment to further progress on reconciliation. In fact, there has been a significant reduction in resources provided by the Commonwealth to the reconciliation process. The preference is to support the promotion of individual citizenship rights, rather than the unique rights and justice issues pertaining to Indigenous people. We note that similar observations were made by Reconciliation Australia during its appearance before this committee, and I would like to take this opportunity to extend ANTaR's support for Reconciliation Australia's request for further resources from the Commonwealth to enable it to carry out its functions adequately.

ANTaR's submission focused on the role of the Commonwealth, and identified the Commonwealth's own actions and policies—at the moment—as significant barriers to the process of reconciliation. In our submission we identified two key areas of concern to us. The first was a lack of national commitment and leadership with respect to the reconciliation process. The second concern was the divisive role of political and policy responses, particularly relating to the promotion of individual citizenship rights in the form of practical reconciliation, as opposed to the general Indigenous affairs issues pertaining to justice and the unique status of Indigenous people. It is worth commenting that these critical failings have been evident in significant developments since our submission was written. I refer specifically to proposed changes to the Human Rights and Equal Opportunity Commission and to pre-emptive changes made to ATSIC in advance of the current review of the organisation.

It is no secret that HREOC's Aboriginal and Torres Strait Islander social justice commissioners have at times been harsh critics of the federal government's actions and policies and have pointed very clearly to the reality of life for Indigenous people on the ground in

Australia. We are used to the government often timing its release of the commission's social justice and native title reports to coincide with occasions when media coverage and consideration are minimal. In fact, the current Social Justice Commissioner, Dr Bill Jonas, recommended that an inquiry such as this one was required to address the apparent stalling of the reconciliation process. In this regard, it is our belief that the government's proposal to remove specific portfolio commissioners is a great concern and leads to a perception that the government is doing so in an attempt to remove further criticism of its Indigenous affairs policy and performance.

In addition, the pre-emptive changes to ATSIC, in separating ATSIC's elected arm from decision making over funding, are of further concern. Here the issue is not just that the government's actions are pre-empting the current review, but that it demonstrates an unwillingness to sit down and negotiate with Indigenous peoples over matters which are of direct and profound importance to their lives. I guess that is one of our fundamental concerns: that Indigenous people need to be the subject of their own development rather than the object of other people's objectives, albeit very well-intentioned. This once again raises the point that reconciliation cannot be a one-way process. If it is to be anything it must include processes of dialogue that include the federal government and that bring Indigenous people to the table as equals.

We believe that so-called practical reconciliation is not enough. The issues encompassed by the policy are not, clearly, just about reconciliation. Quite simply, health, education and welfare concerns for Indigenous people are those people's rights as citizens, not just because they are Indigenous people; or, to put that in the terms of Sir Ronald Wilson, if we treat people who start from unequal positions equally, what we then serve to do is to entrench inequality.

We are deeply concerned about the current crisis of Indigenous health disadvantage across the country. Indigenous people have suffered as a result of the policies of successive governments and we believe that at the moment it is being used as a wedge to turn public opinion against the recognition and rights agenda that has underpinned Indigenous expectations of reconciliation. Of late there has been an attack on or a watering down of the concept of self-determination—attempts to walk away from self-determination rather than to say that self-determination can be improved and should be improved. To take it off the agenda would be a fundamental error and a return to the dark days of the past.

If we cling to such a one-sided and distorted notion of reconciliation, if we continue to repel and repudiate the long-held aspirations of Indigenous people for reconciliation, for justice and for the protection of their special rights, we will surely never reach our goal. We have been heartened by the fact that the support for ANTaR has held up in the Australian community, often much to our surprise. We believe that the Australian people want the federal government formally engaged in the process and not standing outside of it. That concludes my introductory remarks, Mr Chairman.

CHAIR—Thanks very much. I have a question about one of the final points you made with respect to self-determination. You said that we should be looking at how we could improve it. Where do you think the concept and the framework or the practice of self-determination need improvement, can it be improved and how can it be improved?

Mr Glendenning—It is a big question, obviously, but the key people to be asking that are Indigenous people. One of the fundamental things that make ANTaR different from other organisations is that we are here to represent the aspirations of non-Indigenous people in support of what Aboriginal people themselves see as necessary. So that is the first thing. Having said that, it is the old subject-object exercise. We have seen lately, particularly with regard to the issues of Indigenous violence and the difficulties in the communities, a range of commentators come out and say, 'This proves that self-determination does not work.' That is wrong, because what is advocated in response is a return to the practices and policies of the past, of assimilation, in you like. So the first thing I say in response to your question is that assimilation is not the answer.

The answer is to develop processes where Indigenous people are the subject of their own development, not the object of other people's intentions—albeit good intentions. That includes the processes of benchmarking and some of the exercises that we have seen of late. They need to include processes and not just be focused on outcomes. But, unless Indigenous people are at the heart of the exercise—it is more than just consultation—and are substantively equal partners, then I think we are looking down the barrel of going back to where we were before. The evidence of that is it does not work.

I do a lot of work outside the country in my day job, which involves work in Africa. There are people in societies and communities in Africa who are doing substantially better than people born in Indigenous communities in Australia in 2003. It seems to me that, internationally, disadvantaged groups that are able to get control of their lives, have access to their culture, have access to their identity, claim their own space, have to be the subject of that process and not the object of other people, particularly not the object of where governments would like them to be.

CHAIR—Sorry about this; a division is being called in the chamber. Mr Glendenning, you may have to excuse us for a few minutes.

Mr Glendenning—Yes, that is fine.

Proceedings suspended from 5.44 p.m. to 5.59 p.m.

Senator SCULLION—In your submission you talk about the effectiveness of government programs and make recommendations that programs should be measured on outcomes rather than on the amount of money spent on them, and I think that is a very important point. How important do you think the whole general roll-out of what is widely referred to as the practical reconciliation agenda is for reconciliation?

Mr Glendenning—Are you asking how important the outcomes are?

Senator SCULLION—I am talking about the whole program and the outcomes.

Mr Glendenning—I think they are a fundamental part of it, but they are not all of it. There are questions beyond the important questions of accountability, effective service delivery and providing a supportive and conducive environment for people to be able to move. All of that is important, but it is also important that the process is one that is going to promote the most effective outcome for people. I think it is true that we need to see programs that improve and

enhance the life opportunities in education and health for Indigenous people—but that is because they are citizens of Australia, not because they are Indigenous people—and we are looking at the process of reconciliation. Every citizen in Australia should have access to those things, independent of their race, creed or colour. To call that reconciliation raises the question: what do we do with reconciliation?

The fact is that the unfinished business of dealing with the stolen generations, the stolen wages and other justice issues remains unaddressed. I think we will know that we have a reconciled Australia when it is not unusual to have an Indigenous senator and when it is not just taken as a given that Indigenous people have a life expectancy 20 years less than the rest of us. An Aboriginal person born in Brewarrina has to put up with a lower life expectancy and fewer chances that a child born today in Zambia. If we are talking seriously about what sort of country we want, we do not want a country in which a proportion of our population has to put up with what they are putting up with at the moment. We have to make it very clear that we do embrace and support effective processes of accountability. We have to ensure that the service delivery advances people. The process to get to that has to make sure that Aboriginal people are not the object but the subject of that process. They have to be engaged and involved.

Dr Cooper—I think the other side to that is that if you only have those programs, if you only have that component which you are calling reconciliation, then you are not really contributing in that sense to the other parts of reconciliation. You cannot look at those things in isolation. Those practical reconciliation programs will not, in themselves, bring about reconciliation. The other thing about that is that we would seriously question the outcomes and efficacy of programs if they are divorced from the broader issues of reconciliation—the so-called symbolic issues and other such issues, which are clearly much more than just symbolic. I think that is another point which really needs to be made about that.

Senator SCULLION—You have spoken about program delivery, which is an important aspect, and I recognise that you have very clearly separated the symbolic aspect and the practical aspect. You say that the application of practical reconciliation is basically about program delivery to Australians. If they live in remote or urban areas, they are just Australians and they deserve exactly the same type and level of services as does every other Australian. That is what I take from your response.

Mr Glendenning—I would like to add, though, that you do not want to make the assumption that people are starting from the same position, because they are not. Therefore, there have to be extra support, extra programs available to people that are effective than would necessarily be available in the eastern suburbs of Sydney and Melbourne. Basically, people are not starting from the same position. I would like to re-emphasise the point that I made before: if we treat people who start from unequal positions equally, all we do is entrench that inequality and it remains ongoing. So there have to be special measures available for Indigenous people and they have to be specially targeted. One of the deep concerns we have is that more resources are required.

Noel Pearson often uses the analogy of needing to spend $1,000 to fix your car but not having that so every six months you spend $200—pretty soon you have spent 20 grand and your car is still off the road. We have never seriously bitten the bullet on what level of support, what level of programs, is required to deal with the level of disadvantage that we are talking about. The other

side of reconciliation is that the vast majority of the Australian people want a decent outcome for Indigenous people, who are not supported—and we know that because of the amount of support that we are getting—and want to see their government involved in the issue seriously, to bring them over the line in terms of awareness and support for the central and unique role that Indigenous people have in this country and not just see it is a problem that has to be addressed.

Senator SCULLION—You have brought up a very interesting point: that it is where you start from, that it is about a level playing field, rather than starting with an inequality and saying, 'We're going to continue to live with it, and it'll always be there.' Whilst respecting what you say, what would you say about the premise that all delivery—for example, for housing and health—instead of coming through OATSIA or through ATSIC, just becomes mainstream, that we remove those bits and we then say that there are areas which need to be topped up; we can build on top of what is existing, so that we will still have the same level of delivery and whoever is delivering it has a responsibility for outcomes and delivery? That is certainly the case in mainstream Australia. Not only is it about how many dollars we spend; they are generally measured and audited on outcomes. What would you say to that sort of concept?

Mr Glendenning—The first thing that I would say is that I am not the right guy to answer the question. I think that is a question that Indigenous people themselves, fundamentally, need to be at the table to address. That is the first thing I would say. But as a person who is involved with reconciliation I would say that the problem with that analysis is, if it does not take into consideration the unique identity, the unique culture and the unique ways of living of Indigenous people, we make the mistake of saying let us just mainstream the mob. It has not worked historically. We have tried it, it has not worked, so we cannot go back there again.

Indigenous people have unique ways of living. There is the whole notion of how people live in a communal away. The great strengths of Indigenous people are undermined if we see it as an individual approach to the citizenship rights of individual people. There is a fundamental uniqueness about Indigenous people that needs to be enhanced and not divided. If you live on this planet for 50,000 years, you probably have got a few things right. One of the difficulties in the process of reconciliation is that those outstanding achievements get neglected. Aboriginal people have survived. It is fundamentally a good news story. It does not mean that we do not have important things to address. But if we undermine the unique identity and culture that those people—the world's oldest living culture, which makes this place that we all share different and unique—have claimed as their own, I think we make a fundamental error.

Dr Cooper—Can I add that if you go along the mainstreaming process, as your model suggests, then you miss out on opportunities such as the Katherine West health agreement. That has managed to do quite a lot of things simultaneously, the most important of which is to really improve the health outcomes, the resources that are going into Indigenous health issues, in that particular area. You also have a system which is run by Aboriginal people themselves. It is an extremely important sort of initiative. If you just go along a mainstreaming line, you are going to miss those opportunities; they will not occur—apart from anything else that is deficient in that kind of approach in terms of recognising Indigenous roles in delivering their own outcomes.

Senator RIDGEWAY—I have a few questions following on from what you said and about your submission. I note that much of what you talk about is developments for the future to deal with the strength of the people's movement and a growing culture of agreement making—you

referred to the Katherine West example—and looking at the youth sector's increasing stake in reconciliation.

One of the things that comes to mind for me is the whole question of how federal policy is developed and the underlying principle—perhaps self-determination—however it is put. Going back over many years, and I note that you talk about self-determination coming in from 1972, would you regard that as having been true self-determination? Have we really had an opportunity in a substantive sense of being able to see self-determination exercised by Indigenous people in a way that would produce results? I am trying to get on the record some sort of comparison. What are we talking about here? Has the government wound it back so far that we are talking about rolling it out again to what it was before they got it elected, or are we talking about something else entirely?

Mr Glendenning—I think the answer to your question is no, we have not seen serious self-determination as it would be defined in other nations. We have not seen that. There has been a difference between the rhetoric and the reality. The first thing is that the self-determination does not necessarily require less resourcing. Indigenous processes over the course of the last 30 years that you are talking about has been fundamentally underpinned by a lack of resources, given the situation that Indigenous people start from. The second thing is that if you compare us to similar nations that we like to compare ourselves to historically—Canada, New Zealand and the United States—life expectancies and social indicators for indigenous peoples there are substantially higher than they are for Indigenous people here. What is the difference? The difference is that in those countries indigenous people were able to reach agreements with governments and statutory authorities to determine things that they claim for themselves and have that enshrined in the law of the land in a way that has not happened here.

Indigenous affairs obviously gets knocked from election to election, government to government and electoral cycle to electoral cycle. It seems that one of the key recommendations of the council for reconciliation has been dropped—that is, the notion of some sort of process of national framework agreement that would put in place very clearly in the law of the land the things that we agree on that need to be done, the achievements that have been gained and to seriously take that question of self-determination, which I think has not been formally addressed. To say that self-determination has failed is a misnomer. Self-determination has never been allowed to be taken seriously. The opportunity has not been provided for that to occur.

Dr Cooper—I agree with what Phil has said. In that regard we might take ATSIC as being an example of the government trying to implement a broader policy of self-determination, but we all know the difficulties that were gone through in the establishment of ATSIC, the number of amendments that were made and the strident opposition to it. Inevitably, we were left with a product that was less than it could have been and probably should have been to enable it to deliver self-determination to the Indigenous community. What I am getting at in answer to the second part of your question is that, in returning to the issue of self-determination, we have to go back to first principles and start with negotiations from the very bottom up in terms of what it is that Indigenous people want and need and defining the kinds of processes through which that can be achieved. We have not got there yet, but there are certain examples that give you hope that it is definitely possible. Again, the Katherine West health agreement that I have just referred to is a simple example, but there are many others.

Senator RIDGEWAY—I am presuming that you are familiar with the submission that was put in by Dr Bill Jonas, a social justice commissioner, and his advocacy that there should be a human rights framework approach in dealing with many of the issues that you talk about in your submission. He also talks about the principle of incremental realisation. I do not know whether you have a view about that. It often crosses my mind that, given the enormity of many of the problems, it becomes a question of knowing where first to start and how we might deal with those issues. I wonder whether ANTaR have considered those issues and, if so, what views have been expressed. Are we talking about everything today or tomorrow, or are we talking about something that can be dealt with over a longer period outside of political cycles and so on?

Dr Cooper—I think that is the real task. It is about how we get there. The issue is that there are no ready answers. There are not one-size-fits-all answers for communities that are spread throughout Australia under very different circumstances and with different aspirations. Clearly, these are issues that need to involve long processes, processes that have prefigured within them the ability to monitor and to assess the outcomes of particular models that might be tried so that, with good knowledge of the base conditions and a degree of trial and error, the right answers can be found. I think it obviously needs a process that has a long-term view and that brings the parties to the table over the long term, with mechanisms to be able to review, change and find the right powers for individual communities.

Mr Glendenning—It is also going to take the rest of the Australian community to understand that. It is not a question of what we do within three years if we have not got the health indicators up to those of people in the affluent suburbs of the larger cities. There is an educational process for the 98 per cent of the Australian community that is non-Indigenous to understand that reality rather than to say that we are just going to roll on an electoral cycle. It is too big a question, and the current situation does not work. The interesting thing, just as an anecdote, is that the current generation of young people were the first generation in lots of ways to grow up with the truth about the history of Australia. Right across the country, the schools, the young people and the ReconciliACTION movement that is part of ANTaR are embracing this. Seventeen schools put on a performance the other day in the northern suburbs of Sydney, asking: if we can celebrate Anzac Day, why don't we honour Indigenous people nationally? How can we live in a society where one group can buy the paintings but at the same time does not think it is appropriate that Indigenous people should live beyond 52 to 57 years of age?

Senator RIDGEWAY—I have a very quick question about ANTaR and its role in relation to reconciliation. Given the way that the politics have been played out on reconciliation and Indigenous affairs in the past few years, how do you go about trying to make the issue an apolitical one with sensible discussion about the development of national policy in a way that produces the outcomes and shifts the emphasis to the outcomes as opposed to just the accountability type things? It seems to me that part of the frustration is about the Indigenous affairs policy being kicked back and forwards as a football. How do you change that, and what sort of role could ANTaR play, for example, as an honest broker in being able to bring people together with different ideological views and different views on what the outcome should be?

Mr Glendenning—We go back to the very first principles at the establishment of ANTaR. It was to help create a space where the Indigenous voice could be heard rather than for us to step into it. I guess the fact is that the best people to do that are the Indigenous people themselves. If you look at the questions of even the moral leadership in the country over the course of the last

couple of decades, you are talking about people like Pat Dodson, Lowitja O'Donoghue, Noel Pearson and you, Senator Ridgeway, who are calling people to something that is above the party political bunfight at a time when most Australians could do with that. I think our role is, firstly, to help create the space and, secondly, to make sure that we are not just teaching songs to the choir. We have to try and talk to those who disagree the most. It is about engaging with the disagreement. I guess that is one of the things that we would urge the government to do—not to separate themselves from the process but to go to those with whom they disagree, because it is in the disagreement and the engagement that we get to a point where reconciliation is possible. So it is to help create the critical space.

CHAIR—Senator Scullion has two questions he would like to place on notice if you can come back to us with answers.

Mr Glendenning—Okay.

Senator SCULLION—The first concerns your organisation, Australians for Native Title and Reconciliation. Issues have been raised with me regarding the title of native title land—whether it should be inalienable freehold land. With regard to the issues associated with it not being freehold land but a different sort—Aboriginal title, or blackfella title, as it has been referred to me—what impact do you think they will have on reconciliation? The second concerns self-determination. We talked about a number of issues and I would like you to give me a response on self-determination in terms of governance and its impact on the capacity for the wider community to protect women and children in Indigenous communities. Self-determination, on one side, gives a whole range of rights. It is sort of politically incorrect to interfere in that governance, because they need self-determination, but if there is a better balance to be had I would like you to comment on that.

CHAIR—You can take those on notice. Thank you for your submission and your tolerance of us this evening.

Committee adjourned at 6.21 p.m.