

INDIGENOUS JUSTICE

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Good afternoon, I would like to begin by acknowledging the Gadigal people of the Eora Nation, the traditional Indigenous owners of the land we meet on today.

The topic I am speaking to you about today is '*Indigenous Justice*'.

This concept is not necessarily easy to define or map out – it is deeply rooted in many different facets of Indigenous peoples' social, political and cultural lives, and is shaped by many underlying aspects of our existence. However, in a broad sense, my vision for Indigenous justice sees Indigenous people simply having the ability to freely exercise their legal, economic, social, cultural and political rights.

However, at present, as you can see from the figures I've just put up, this vision is enormously ambitious. If you're an Indigenous child born in Australia today, then chances are, you are being born into a life of considerable disadvantage. If this seems a bit fatalistic, then consider this:

As an Indigenous person, you can expect to live for 15 to 20 years less than a non-Aboriginal person. Imagine if you are an Indigenous male aged 56, it is highly likely you may not celebrate your 57th birthday.

In addition to a much lower life expectancy than the Australian population as a whole, as an Indigenous child, it is likely you will receive a much **poorer education** than other Australians, whether you're in a country town or going to the local city school. Literacy and numeracy levels are substantially less for Indigenous children than the population as a whole, and while 70% of Australian children will complete their schooling up until Year 12, only 30% of Indigenous children will complete their HSC.

Not only does this have a substantial impact on an Indigenous person's ability to engage in various basic aspects of society, but it greatly affects young Indigenous peoples' prospects of securing and maintaining a job. Indigenous **unemployment** rates are now up to 26%, in comparison to a level of 8% for the whole Australian population. The boredom, frustration, and resulting lack of self esteem associated with joblessness often leads to young people filling in their time by other means, including **substance abuse** through, among other things, petrol sniffing. Deaths resulting from petrol and paint sniffing are becoming all too frequent in Indigenous communities.

Additionally, and often most tragically, as an Indigenous child, you are 25 times more likely to be affected by **violence**. This impact may occur either through witnessing violence, or by being directly abused – either way they are still a victim.. Not only does this cause extensive adverse psychological and physical damage, but can potentially become a learned and accepted pattern of behaviour. It is said that '*violence breeds violence*'. **Youth suicide** levels are also tragically high, with young Indigenous people taking their lives at a rate of 15 times the Australian population as a whole.

These factors contribute to frequent contact with police, the courts, and often, incarceration. As an Indigenous child, you can expect to come into extensive adverse contact with the **juvenile justice system** and **criminal justice system**, a situation which is exacerbated in places such as Western Australia, whose mandatory sentencing regime captures a vastly disproportionate number of young Indigenous people.

So by the age of 18, as an Indigenous person, you have, unfortunately, a greater likelihood of experiencing substance abuse, being unemployed, experiencing violence all of which can lead to substantial and frequent contact with the criminal justice system. Of course, this is not the case for many Indigenous people, who are able to remain, for the most part, removed from such a plight, but we cannot ignore the considerable proportion of the population who are affected by these issues. With such extreme disadvantage, and in the face of these facts, we have to ask, '*What are the implications for Indigenous justice?*'

Well, I can assure you that this question has been addressed – time and time again – but not categorically answered. 1991 saw the release of the Royal Commission into Indigenous Deaths in Custody, which revealed the unacceptable number of Indigenous deaths in jail, and 339 recommendations were subsequently made in order to assist the Australian Government to address this situation. Despite a \$400 million allocation by the Commonwealth Government for the implementation of these recommendations, the level of Indigenous over-representation in the criminal justice system has in fact worsened – rather than improved – since the Royal Commission. For instance, since the Royal Commission the number of Indigenous prisoners has increased by 8% (compared to a 3% increase in the general population) and Indigenous adults are 14.9 times more likely to be imprisoned than the general population.

As the 2001 Social Justice Report indicated, the sense of urgency and commitment to addressing this over-representation in criminal justice processes has slowly lost momentum. Indigenous people have continued to die in custody since the Royal Commission, and the average rate of Indigenous people in correctional centres has steadily increased on a national basis since this time.

However, today, this is barely a cause for concern, let alone outrage, among the Australian community. The statistics either go unnoticed, or perhaps in this so-called age of reconciliation, are simply accepted without question.

Now, more than ever, we can not afford to ignore the steadily increasing incarceration rates of our Indigenous youth. Currently young Indigenous people make up 42% of the juvenile detention population. While this is in itself alarming and a cause for immediate action, this is coupled with a rapidly increasing population of Indigenous youth. While the Australian population as a whole is ageing, the Indigenous population is predominantly young, with over 40% under 15 years of age. When this is viewed against a juvenile justice **correctional centre rate** of 15.5 times greater than the non-Indigenous rate, the urgency of the situation becomes more than apparent.

If we continue to ignore this precarious situation, our Indigenous children will continue to go to jail, and, following the trend over the last decade, will continue to die in custody in increasing numbers. We cannot stand back and allow this to happen, because our children, as is so often said, are our **future**. As the Royal Commission stated in 1992, *this state of affairs would simply not be tolerated if it was occurring in the non-Indigenous community*.

In this context, 'Indigenous Justice', is far from being a reality in Australia today. We aspire to have Indigenous people freely exercising their legal, economic, social, cultural and political rights, but, to put it plainly, we cannot achieve this with so many of our people affected by violence, poverty, and low self-esteem.

How, then, in such a fraught environment, *can* justice be achieved? The nature of the problems we are facing may be inherently complex, but I firmly believe that the situation is far from the hopeless picture that is often painted.

I believe that, despite the difficulties our Indigenous communities are facing, we have to imagine that a better justice is possible and act accordingly. The only way we are to succeed in reducing incarceration rates and improving the wellbeing of Indigenous people is by believing that this improvement is possible, and by following this conviction through with funding and support for preventative initiatives.

So what is the answer? The key to Indigenous justice, and the future of Indigenous people, lies in **prevention**, in addressing the **underlying causes** of the issues facing communities. This view is widely-held – we frequently hear of the adoption of 'whole-of-government' responses to Indigenous affairs, of wholistic or partnership approaches, or of the need for educative strategies that focus on the underlying causes to problems within Indigenous communities rather than merely applying knee-jerk or band-aid solutions.

The reason why there is a widespread emphasis on achieving justice by dealing with the underlying causes of Indigenous problems is because *this is the only way we can progress to achieve meaningful and sustainable solutions*. Dealing with one aspect of the problem, such as the provision of substance abuse programs or employment schemes, is important, but insufficient in itself. It needs to be supplemented with initiatives to improve education, to reduce exposure to violence, and to divert potential offenders away from the criminal justice system.

ATSIC itself has taken the lead in addressing these underlying causes, and advocating for partnerships to be built up through government departments and community agencies. Employment, for example, is a significant issue in Indigenous communities, as it constitutes not only a means of livelihood and occupation, but a potential source of self-esteem and independence.

Through its **Community Development Employment Projects**, ATSIC supports local employment and training initiatives. CDEP is crucial to many communities in this respect, as it provides an essential service to Indigenous people who live in areas where few employment prospects are available. The scheme involves over 30 000 participants who voluntarily forgo their rights to social security entitlements, and instead, are paid wages by CDEP organisations roughly equivalent to those benefits in return for part-time work. The scheme, since its inception in 1977, has not only maintained a socio-cultural base in communities, but has increased Indigenous participation in the economy and local labour markets. It has also facilitated Indigenous involvement in management and decision-making and has allowed for the development of skills in administration and specific job-related areas.

Thus, since the 1970's the CDEP program has been crucial in addressing the underlying causes of Indigenous disadvantage and contact with the CJS by not only providing a workable alternative to government welfare benefits, but also through developing and building up the community.

Whilst CDEP is ATSIC's largest single program, ATSIC also provides funding support for a range of other programs designed to improve the social, physical and cultural wellbeing of Indigenous people. The programs include:

- Community Housing and Infrastructure;
- Native Title;
- Sport and recreation;
- Family tracing and reunion;
- Art and culture;
- Indigenous broadcasting;
- Language preservation; and
- Legal and prevention.

It is through these programs that ATSIC is addressing the causes underlying Indigenous disadvantage and providing for the development of a sound community base and identity to minimise further contact with the criminal justice system. However, ATSIC recognises that we also need to address the immediate needs of Indigenous people already embroiled in the justice system.

First and foremost, this involves the provision of Indigenous-specific legal aid. ATSIC funds a national network of 25 **Indigenous and Torres Strait Islander Legal Services (ATSILS)**, which have sub-offices in 91 rural and remote localities, and these ATSILS specifically address this by providing assistance with:

- Language difficulties;
- Representation and explanation of the law in the face of what is often limited understanding of the CJS by Indigenous people; and

- Advocating and negotiating with relevant government authorities for services to Indigenous people.

Due to their superior knowledge of their clients' culture and circumstances, ATSILS are considered by Indigenous people to be the preferred source of legal assistance. They provide a unique service which is able to intervene at critical times in remote locations, and it is the provision of these culturally appropriate measures that renders ATSILS an indispensable resource for Indigenous people.

Additionally, as I have previously mentioned, family violence is an enormous issue facing many Indigenous communities that not only results in physical and emotional pain and torment, but in extensive contact with the CJS. In response to these issues, ATSIC has developed a **Family Violence Prevention Program**. At the core of this program are thirteen **Family Violence Prevention and Legal Services**, which provide the victims of violence with immediate assistance in the form of legal and practical support. The services also aim to reduce the incidence of abuse through preventative measures such as community education and counselling.

Therefore, ATSIC is very active in reinforcing preventative initiatives to strive for justice for Indigenous people. To move forward in achieving this justice, Governments have to be unified in their responses to Indigenous law and justice issues.

Many Commonwealth and State initiatives have constituted a big step forward for Indigenous communities, however, unfortunately these initiatives are not universal, and in some cases recent initiatives are unsympathetic towards justice for Indigenous people.

The recent revival of a 'zero tolerance' approach to policing, which promotes a culture of prosecution for minor public order offences, has had a vast, disproportionate impact on the Indigenous population. Indigenous peoples' cultural preference for the use of public space, coupled with the revival of rigorous policing in the public domain, has contributed substantially to the rise in incarceration rates for the Indigenous population. Such an ethic clearly flies in the face of the RCIADIC recommendations, as well as recommendations of the Human Rights and Equal Opportunity Commission that are opposed to such punitive measures.

Additionally, the mandatory sentencing regime that still exists in WA is yet another example of legislation that impacts disproportionately on Indigenous youth. Diversionary initiatives such as community orders are often neglected in favour of a custodial sentence, and abuse of process and blatant discrimination still occurs within the courts, especially in remote settings, often with the most tragic of consequences.

One particularly appalling example of abuse of process in the rural court system involved a 15-year-old Indigenous orphan from Groote Eylandt, who was jailed under mandatory sentencing laws for stealing textas and paint. Despite being just days away from completing his 28-day sentence, the boy hanged himself with a bedsheet in his cell.

All the preventative measures in the world are fruitless in the face of such appalling circumstances. If we don't, as a nation, show an awareness of historical circumstances and their prevailing impact on Indigenous people, and change the direction of our attitudes and our policies **now**, we cannot hope to achieve justice for Indigenous people. Such justice requires a not only a whole-of-government response, but a whole-of-community approach. We need to develop a community conscience that respects and values our Indigenous people, and is reflected in concrete terms through affirmative action in employment, and an end to discrimination in policies relating to law and justice.

Some progress within community groups has already been achieved. Many Indigenous initiatives rely heavily on the goodwill of the private sector, for example projects such as the Lloyd McDermott Rugby Program which provides support for young Indigenous people using sport as the spark, have been operating for some years. This project provides an important sense of identity and unity to young Indigenous people. So does the National Indigenous Sports Corporation programs which include their golfing initiative " Hunt For A Tiger." These positive programs that expose Indigenous young people to areas of life which, for many, they would not otherwise have experienced. Most importantly, they are provided with opportunities of choice.

Many of you here today are involved in various aspects of the criminal justice system and crime prevention – whether you're a police officer, a lawyer, or a government worker – you are all potential key players in preventing Indigenous contact with the criminal justice system. But I put it to you, that as crucial as your roles are, the real crime prevention starts before we even get to these later stages of the system. To really engage in crime prevention, we need to engage with our children in the earliest stages, before they wind up in trouble with the police or with the courts. The real prevention begins with **EDUCATION, at home and school**. If we can reach out to our children from the time they start school, in their formative years, and support them with a sense of worth, self-esteem, knowledge and value, then we are well on the road to preventing them from committing crimes later down the track.

Education in this sense goes beyond teaching children about the three R's. Education is more about self-development, about creating support networks, about building self-esteem and communication skills, and empowering Indigenous children, their families, and their communities. If this is being done the, the 3 R's will be more achievable.

At the moment, the education system is seen by many Indigenous people as not being supportive to Indigenous needs. They see more positive action needs to happen to effectively address the issues of racism and discrimination faced by Indigenous students both in the school environment and in the job market; more effort to involve parents and communities in their children's education; to increase the number of teachers with appropriate skills and cultural knowledge. Ensuring education is culturally relevant, and involving the family in the process of learning, are two crucial factors in making sure that our children not only stay in school, but are inspired and excited by what they are learning.

The situation of low literacy levels and poor attendance that currently exists must change. This problem is especially apparent in regional and rural Australia, where the educational opportunities for Indigenous children are literally few and far between.

There has been some progression in education over the last decades, from both the Government and ATSIC, with one example being the launch of the Government's National Indigenous Literacy and Numeracy Strategy in March 2000. The results of such programs are just starting to become apparent – the proportion of Indigenous children who stay on at school through to final year, for example, has increased from around one in eleven in 1971 to over one in three in 2000.

Yet there is still much to be done. Plato told us that '*The direction in which education starts a person will determine his or her future life*', and I cannot emphasise the importance of this sentiment enough. If you can empower a child when they are young, through education, then you have empowered them for life. Education has the ability to change the direction of peoples' lives. At the moment, the direction of many kids' lives is downhill – they're doomed to failure from the start. But providing opportunities to turn these lives around is possible. To achieve justice for these kids, for our next generation, it is essential. I always say, '*If you don't change your direction, you will end up where you are heading.*' Let's not see these kids head down the path of their forefathers – to jail, to unemployment, to poverty. Let's support their life education, let them experience the triumph of learning and growing, support them with equal and positive opportunities.

To finish up, I'd like to acknowledge all the people, both Indigenous and non-Indigenous, who are out there fighting for justice for our Indigenous communities. As you are aware, at various times throughout the last century, Indigenous affairs has ignited much debate, and have entered the forefront of politics - the 1967 Referendum, the handing down of the High Court's Mabo judgment in 1992, the Walk for Reconciliation in 2000... and as a new century dawns, there is no reason why the pursuit of Indigenous justice cannot be progressed with the same vigour.

There are many people out there - and I'd like to acknowledge their contributions now – who are keeping this fire alive and who continue to fight consistently for justice for our Indigenous people. I want to leave you with a snapshot of these efforts, with a short video that shows the struggles of these people over the years entitled '*From Little Things, Big Things Grow.*' The video primarily shows Indigenous peoples' struggles for land rights, and the recognition of native title, but it serves as a metaphor for the whole healing process. If we can start with our children, and make some changes to their lives right from the beginning, then we will be able to see the impact of these changes as our children grow up. We may have a fair distance to cover yet, but by working this distance through partnerships, and education, and prevention, we can achieve our vision for Indigenous justice – it *can* become material, it *can* become tangible, and it will, one day, become a reality for the Indigenous people of this country – remember, from little things big things can grow.

I thank you for your attention, and hope that my comments twig at the core of your conscience to actively and positively support the vision for Indigenous Justice.