Speech on Aboriginal land rights

21 January 1977 – The following is the text of a speech by the Leader of the Opposition, the Hon. E. G. Whitlam, on ‘Aboriginal land rights: The continuing campaign’ to a land rights conference of the North Queensland Land Rights Committee in Cairns:

The purpose of your conference this weekend is to continue the struggle for land rights for your people and for their descendants. It is a noble cause which every political party would profess to support. Yet I doubt if there is an issue in Federal politics on which the parties are closer in theory yet further apart in practice. You will forgive me, then, if my remarks today have a heavy political emphasis.

This is not an issue on which we need to be reticent or ought to mince words. Let me make it clear that there are men and women on both sides of politics in Australia whose record on this issue is admirable and whose good faith cannot be questioned. In nothing have I have to say do I intend any criticism of them or cast doubt on their sincerity, or good faith in working for the rights and welfare of the Aborigines. It is, however, essential to set out clearly the records of the present Government and its predecessor. You will forgive me if I draw harsh conclusions.

First, a little history. In July 1768 the British Admiralty issued Captain Cook with the following secret instructions:

You are to observe the genius, temper, disposition and number of the natives if there be any and endeavour by all proper means to initiate a friendship and alliance with them, making them presents of such trifles as they may value... You are also with the consent of the natives to take possession of convenient situations in the country in the name of the King of Great Britain.

It is a matter of historical record that despite the foresight of the British Admiralty and perhaps through the fault of Captain Cook, your ancestors were forcibly dispossessed of the one material possession of great significance to them—their land. It is taking us a long time to redress that injustice. Many other countries including New Zealand and the United States recognised the land claims of their original inhabitants years ago. Australia is doing so belatedly. The Aboriginal Land Rights (Northern Territory) Act 1976 will be recorded as the first statutory recognition of Aboriginal land rights to be passed by Parliament since Federation. It should also be recorded that this legislation represents a cruel deception of Aborigines by a Government that promised much and has given little. In effect it grants land to Aborigines but denies them control of it. It will deny many Aborigines the chance to regain a portion of their heritage.

Let me compare the Bill in some detail with that introduced by the Labor Government in 1975. The 1976 Act not only failed to fulfil the numerous promises made by the Liberal and National Country Parties to Aborigines but fails to implement many of the recommendations in the report commissioned by my Government from Mr Justice A. E. Woodward. Mr Justice Woodward recommended that legislation for Aboriginal land rights should be passed by such a way that its provisions cannot be eroded by the effect of any Northern Territory Ordinances. Clause 76 (2) of Labor’s Bill provided that regulations promulgated in accordance with the legislation may provide for the exclusion or modification of a law of the Northern Territory in its application to Aboriginal land. The Prime Minister and the Minister for Aboriginal Affairs in March last year assured a delegation of Aborigines that the Federal Government would retain control of land rights legislation. The Act passed last month expressly omits this clause and effectively passes control of the legislation to the Northern Territory Legislative Assembly. The effectiveness of Aboriginal Land Councils has also been severely restricted by substantial amendments to Labor’s proposals by the 1976 Act. Mr Justice Woodward recommended that Land Councils should have power to investigate and report on the land requirements of Aborigines in towns and assist Aborigines to lay claim to vacant Crown lands. The clauses in Labor’s legislation relating to these functions have been omitted from the 1976 Act. The Minister states that the Aboriginal Legal Service and departmental officers will assist Aborigines to present claims to the Land Commissioner. It is common knowledge that the Aboriginal Legal Service has been starved of funds by the present Government and the Department is understaffed and not always as responsive to Aboriginal claims as they might be. This omission will seriously restrict the ability of Aborigines to present claims for land before the Commission.

In one stroke the Government has also denied the many Aborigines who have been forced to live in areas other than their traditional land the opportunity of assistance under the Act. Mr Justice Woodward recognised that Aborigines on pastoral properties or fringe dwellers should have the opportunity to submit claims to the Land Commissioner on a ‘needs’ basis. Labor’s legislation provided (in clause 56) only for Crown land in which a person has an interest and grants of land to Aboriginal councils for a particular purpose. These provisions have been omitted from the Government’s legislation and claims before the Land Commissioner will be limited to traditional, unalienated Crown land. In future, claims on a needs basis will have to be submitted to the Northern Territory Land Commissioner, whose charter makes no recognition of the special needs of Aborigines. In addition, in order to ensure that Aboriginal landowners could continue traditional fishing activities in the adjacent seas, Labor’s legislation provided for an extension of Aboriginal land for 2 km into the adjoining Territorial sea (clause 74). This provision has been omitted from the Government’s Bill, perhaps at the expense of the traditional food resources of these people.
The present Government has passed effective control of the legislation to the Northern Territory Legislative Assembly by not enacting or modifying the application of Northern Territory law to Aboriginal land. Not content with this, the Government has also transferred to the Assembly a number of vital powers previously conferred on Aborigines. Labor's legislation provided that the Land Councils would have the power to issue permits to non-Aborigines to enter Aboriginal reserves (clause 73(1)). It also contained provisions that protected Aboriginal sacred sites (clause 72). The Legislative Assembly will now legislate on these matters, despite its poor record in protecting Aboriginal sacred sites in the past. Again, the 1975 Bill, in accordance with the Woodward report, specifically guaranteed the right of Aborigines to enter pastoral leases to hunt or live (clause 68). The Government has omitted this clause and the right of Aborigines to enter this land will now depend on the whim of the Legislative Assembly. In short, the Fraser Government's legislation fails to implement the most significant recommendations of Mr Justice Woodward contained in Labor's Bill and represents a virtual denial of Aboriginal aspirations in the Northern Territory.

The struggle for land rights for Aborigines has been brief in historical terms, but it is a struggle in which international opinion and the Labor Party have played leading roles. I shall recall the principle landmarks. In 1957 the International Labour Organisation adopted Convention No. 107, the Indigenous and Tribal Populations Convention. This sought to promote continued action by ILO members to retain a strong tribal structure or demonstrate a potential for Aboriginal aspirations in the Northern Territory.

In my policy speech for the 1969 election I explained how Labor would implement Article 11 of that Convention. I pledged that a Labor Government would vest existent land rights of these people. Australian Government delegates at the ILO conference abstained from voting on the Convention. It nevertheless came into force in 1959 and member states of the ILO were invited to endorse it. On 6 September 1960 I asked the then Minister for Labor and National Service, Mr Lynch, stated in response to a question on notice from me: "The Government believes that it is wholly wrong to encourage Aborigines to think that because their ancestors have had a long association with a particular piece of land, Aborigines of the present day have the right to demand ownership of it."

On 24 October 1972, thirteen years after the Convention came into force, the then Minister for Labour and National Service, Mr Lynch, stated in response to a question on notice from me: "Progress in respect of Convention No. 107 is dependent upon clarification as to precisely what action would be required in the Australian context to give effect to the provisions of the Convention concerning recognition of rights of ownership of land which indigenous populations traditionally occupy."

What a record! It took the conservative governments thirteen years to get around to asking the ILO for clarification of the terms of the Convention. They failed to support the Convention in 1957 and failed to implement it in the fifteen years before they were thrown out of office in 1972. The conservative parties were also slow in seeking constitutional reform to enable the Federal Government to legislate for Aborigines. In 1958 and 1959 the Constitutional Review Committee recommended the repeal of both Section 127 of the Constitution, excluding Aborigines from the census, and the words of paragraph (xxvi) of Section 51 which prevented the Federal Parliament making special laws for Aborigines. These amendments would permit the Commonwealth Government to assist the most oppressed and deprived minority in the nation and ensure that Commonwealth legislation would take precedence over inconsistent State Acts. The Federal Conference of the Labor Party in 1959 made it Party policy to endorse these recommendations and seek an early referendum.

The majority of Aborigines in 1959 lived in extreme degradation, with some of the worst pockets of poverty and disease in this country. The incidence of leprosy, tuberculosis and infant mortality was higher among Aborigines than among any other known section of the world's population. The Labor Party was aware of the desperate plight of Aborigines. On three occasions Labor introduced resolutions in the House of Representatives calling for all the recommendations of the Constitutional Review Committee to be put to a referendum. The conservative parties procrastinated for eight long years. Finally, on 27 May 1967 the Government's proposals to the Constitution were put to a referendum, and the Australian electorate voted with virtual unanimity to expunge the objectionable and inhibiting parts of the Constitution.

Having acquired this power to redress the degradation and deprivation suffered by Aborigines since 1788, successive conservative governments failed to utilise it. On 13 August 1968 in an urgency motion in the House of Representatives I drew attention to the Government's continued delay in discharging the mandate conferred by the electorate. Fifteen months had elapsed since the referendum. Where were the Commonwealth initiatives to tackle the appalling health problems facing Aboriginals, the development of educational and employment opportunities and the recognition of Aboriginal land rights?

The record of indifference and inactivity continued until Labor came into power in 1972. In my policy speech for the 1972 election I pledged that a Labor Government would:

- legislate to establish for land in Commonwealth Territories which is reserved for Aboriginal use and benefit a system of Aboriginal tenure based on traditional rights of clan and other tribal groups and under this legislation vest such land in Aboriginal communities;
- establish an Aboriginal Land Fund to purchase or acquire land for significant continuing Aboriginal communities.
In its term of office, twice cut short by the conservative-controlled Senate, the Labor Government implemented but then broke its own promises. When Mr Justice Woodward was elected, Mr Justice Woodward was commissioned to inquire into the best means of recognising and establishing the traditional land rights of Aboriginals. He presented his final report in April 1974 and recommended that Aboriginal land rights legislation should be introduced into the Australian Parliament and that it should not be capable of being affected by Northern Territory Ordinances. He also recommended that an Aboriginal Land Commission be established in the Territory to assist Aboriginals in laying claims to traditional land, and in investigating these claims.

In August 1975 I visited Wattie Creek in the Northern Territory in order to demonstrate Labor’s commitment to land rights for all Aboriginal people. The Gurindji people were given leasehold title to their land and a firm assurance that this title would become freehold after the passage of Labor’s land rights legislation. It is a matter of great concern to me personally that this commitment, entered into in good faith by the Gurindji and the elected Government of the day, has now been abrogated. The Gurindji did not have the freehold title to their land until the passage of land rights legislation. Once again they will have to place their claim before a land commissioner and take up the fight for this land which they commenced eleven years ago.

Labor’s legislation was introduced by Les Johnson on 16 October 1975. The conservative parties immediately sought to delay it further by moving to refer it to a Standing Committee of the House. One month after its legislation was introduced, the Labor Government was discredited and the subsequent dissolution of both Houses of Parliament caused the Bill to lapse. Aboriginals, like so many Australians, suffered because of the events of November 1975 and have continued to suffer at the hands of the Fraser Government.

Labor had nevertheless already established the Aboriginal Land Fund Commission in 1974 to give effect to my other election pledge. The Commission was established to purchase Crown land on behalf of Aboriginals and has assisted many communities in northern Australia. My Government also sought the early ratification of Convention No. 107. In 1973 a conference of Commonwealth and State Ministers for Labour agreed that the Convention would be accorded top priority. At that time only the Western Australian and Queensland Governments had failed to agree to ratify the Convention. My Government, also sought, by enacting the Queensland Aboriginals and Torres Strait Islanders (Discriminatory Laws) Act 1975, to modify repugnant Queensland legislation that had long denied human rights to Aboriginals and Torres Strait Islanders. Furthermore, it is a matter of public record that Labor for the first time in Australian history began to attack the serious health, housing, employment and educational problems ignored for so long by the conservative parties.

The tragedy is that the conservatives on their return to government have been even more indifferent to Aboriginal welfare than they were previously. Before the election in December 1975, many Aboriginal communities and individuals were alarmed about the intentions of the Liberal-National Country Parties with regard to land rights and Aboriginal assistance programs. Their concern was justified. In order to allay these fears the Liberal spokesman on Aboriginal Affairs, the present Attorney-General, sent a telegram to Aboriginal communities throughout Australia which contained the following promise:

Liberal-National Country Party policy . . . Aboriginal land rights . . . we will help Aboriginals to buy land off reserves. Want local Aboriginal owners to control use and development of the land to decide who should be permitted enter their reserves.

The telegram went on to say:

Spread the word there is absolutely no truth in Labor Party rumours about cuts in Aboriginal Affairs budget.

The great deception had begun. It is a matter of record that the promise regarding the funding of Aboriginal assistance programs was broken after two months. On 4 February the Minister for Aboriginal Affairs announced that $7m was to be cut from the budget of the Department of Aboriginal Affairs in the balance of the 1975-76 financial year. Mr Lynch on 17 August 1976 announced a further reduction of $32.4m in expenditure on Aboriginal welfare in 1976-77. On 16 December he foreshadowed further reduction in government expenditure which may eliminate the benefits of the Government’s belated decision on 5 October to restore $25m of the earlier cuts. These savage restrictions in expenditure in effect emasculated the Aboriginal Land Commission and make a mockery of Mr Ellicott’s promise to help Aboriginals buy land off reserves. The Aboriginal Land Fund Commission was given no funds in the 1976-77 Budget and is expected to continue its operations on funds that have been purported to be carried over from the last financial year. The $1m involved has in fact already been committed so that the Aboriginal Land Fund Commission will effectively cease operations this year.

Not content with slashing expenditure on Aboriginal assistance programs and emasculating the Aboriginal Land Fund Commission, the Fraser Government has also effectively deprived Aboriginals of even the limited rights they would enjoy under the land legislation. The Minister for Aboriginal Affairs on 8 August 1976 directed Mr Justice Woodward, the Interim Land Commissioner, to cease hearing land claims at Borroloola and Ranger until the land rights legislation was passed and a permanent commissioner appointed. This action put all pending Aboriginal land claims at risk because the freeze on the release of unalienated land, designed to give Aboriginals a chance to lay claim to this land, only extended to 31 December 1976. The Government refused to respond to repeated calls by members of the Labor Party for this freeze to be extended because of the undue delay in the passage of the legislation. The Bill was not finally debated until December, so that there was no opportunity for a permanent land commissioner to be appointed before the freeze expired. Despite assurances from the Minister—and these have proved worthless in the past—there is now no legal barrier to the Crown alienating land claimed by Aboriginals.

The Fraser Government has not only denied land rights to Aboriginals in the Northern Territory. It has failed to act in the interests of Queensland Aboriginals and equivoicated in the face of pressure from the Queensland Government. On 23 March 1976 the Prime Minister, in response to a question without notice from me, assured me that the Queensland Government was bent on denying every legitimate aspiration of Queensland Aboriginals in the Northern Territory. It has failed to acquire this land in future. What consultation was there between the Queensland Government and the Aboriginals of Aurukun before this decision was made? The Queensland Government is bent on denying every legitimate aspiration of Queensland Aboriginals, and the Fraser Government’s silence brands it as an accomplice to this denial of internationally accepted basic human rights. Queensland is now the only Government in Australia that refuses to ratify Convention No. 107. The acting Minister for Employment and Industrial Relations, Mr Howard, wrote to me on 5 October last to say the Queensland Government was still examining the matter. A question from me about it still remains unanswered on the notice paper. It is now twenty years since the ILO adopted this Convention and four years since Queensland agreed that this Convention should be adopted as a matter of urgency. This record is one which no Queensland, white or black, can condone.
Stung by the public's outrage after the 1976 Budget at the breach of promises to Aboriginals, the Fraser Government resorted to a diversionary tactic. In answer to prearranged questions in Parliament the Prime Minister himself twice tried to blame the Labor Government for an increase in the number of Aboriginals unemployed. He claimed that the numbers had risen by 138 per cent under Labor. In the past fortnight the Fraser Government has been shown to be cooking the books on unemployment. Not content with denying school leavers unemployment benefits, the Government has also sought to reduce the numbers of persons registering as unemployed.

So, too, with Aboriginal unemployment. The number of Aboriginals registered as unemployed rose under the Labor Government from 3734 at the end of November 1972 to 8255 at the end of October 1975, but the Prime Minister is either deluding himself or deceiving his colleagues and the Australian public if he maintains that this represents a 'real' increase in unemployment. What Labor did was uncover the real extent of Aboriginal unemployment which the Liberals had concealed. The simple fact is that Aboriginal unemployment was much higher than 10 000 in 1972 because successive Liberal-Country Party Governments had ignored the problem by effectively preventing many Aboriginals from registering.

My Government took two initiatives that disclosed the full extent of Aboriginal unemployment and extended the same rights to Aboriginals enjoyed by all members of the community. In 1973, the work test that determines eligibility for unemployment benefits was modified so that Aboriginals on missions and reserves did not have to move to stations and towns in order to make themselves available for employment. In addition, the strength of the Aboriginal employment section of the then Department of Labor and Immigration was increased from sixty-five to one hundred positions in December 1973 to 122 in September 1975. The majority of these new positions were for vocational officers, appointed to visit outlying areas and encourage registration. An increase in the numbers of Aboriginals registered as unemployed promises to help the numbers of unemployed Aboriginals, was thus inevitable.

Let us see how the Fraser Government has assisted Aboriginals to find employment. In March 1976 the Government applied severe staff and travel restrictions to Australian Government departments, including the Aboriginal Employment Service. These restrictions prevented vocational officers from visiting outlying areas. In reply to a question on notice from Senator Colston on 3 June, the Minister for Employment and Industrial Relations listed no fewer than fifty-seven Aboriginal communities and towns with high Aboriginal populations that had not been visited by vocational officers because of the travel restrictions. The Government's policy not only reduced expenditure on Public Service travel but denied many Aboriginal unemployment benefits to which they were legally entitled. The travel restrictions have since been lifted but this cynical policy was still being used by the Government in October to depress the rate of Aboriginal unemployment. At 1 October the staff establishment of the Aboriginal Employment Section was 125 positions, of which only eighty-four were filled. The majority of these unfilled vacancies were for vocational officers whose sole task is to visit outlying communities to register Aboriginals as unemployed. The Prime Minister is clearly intent on solving the problem of Aboriginal unemployment with the same methods he uses for other Australians—by faking the figures. Yet the Minister for Aboriginal Affairs admitted in a press statement on 28 May that the problem was widespread and required urgent attention. His statement said:

An investigation by the Department of Aboriginal Affairs had shown that at least 50 per cent of the Aboriginal workforce was unemployed. This figure compared with 4.4 per cent of the workforce as a whole. The problem was especially severe in rural areas.

The House of Representatives Standing Committee on Aboriginal Affairs also examined Aboriginal employment in its report to Parliament last year. This all party Committee recognised the need for significant Government assistance and innovation in this field. I quote from paragraphs 28 and 30 of the report:

The Committee recognises that special initiatives are needed to create and restore employment and training opportunities for Aboriginals . . . The need for special initiatives in the field of Aboriginal employment stems from the high level of Aboriginal unemployment, lack of general education, formal and on-the-job training, work experience and discrimination against them.

The Committee went on to recommend that the special work projects scheme be expanded and that the Australian Government make the necessary funds available. Again, last August, a Senate Select Committee reported on the environmental conditions of Aboriginals and Torres Strait Islanders and presented detailed comment and recommendations to alleviate the problem of Aboriginal employment. The Committee noted:

Employment, and lack of employment, are but one component of the cycle which ensures the perpetuation of poverty. If a person is to break out of the poverty situation into which he was born, he must be able to achieve economic security, which implies permanent employment . . .

The overwhelming conclusion of all these commissions and committees is that immediate action by the Federal Government is necessary if the depressing cycle of Aboriginal poverty and unemployment is to be broken. Despite the impediments which the Fraser Government has put in the way of Aboriginals registering for employment the numbers who had registered rose from 8255 at the end of October 1975 to 11 812 at the end of December 1976.

All told it is a long and sorry story. But it is a story that must be told. The lesson must be learnt. And the first lesson is the immense power of conservatives to obstruct and delay reform. Yet we can also see that persistence, determination and unrelenting pressure can bring about results. If parties and groups and individuals make it clear that they won't accept delay and obstruction, even conservative governments can be forced into action. We have seen what can be done by an elected Labor Government. We have seen what can be done by royal commissions and inquiries. Labor was successful in getting a joint Federal and State Royal Commission in Western Australia into police practices as they affected Aboriginals. We have a Parliamentary Committee at last investigating Aboriginal health problems in Cape York. Public pressure has at least partly, and at least temporarily, modified the cuts in Aboriginal funds in the last Federal Budget. Progress is slow but sure. With more effort and more pressure I believe we can reverse the changes made in Labor's land rights legislation. We can put this country firmly back on the path of redressing two centuries of injustice and repression. I am sorry it is taking so long, but in the end it is certain that the battle will be won. The fight is one for all Aboriginals and for all Australians who believe in justice and value their country's good name.