



**National Reconciliation Week**  
**Function at Supreme Court**

Address by

**The Hon David K Malcolm AC CitWA**  
**Chief Justice of Western Australia**

**Supreme Court of Western Australia**  
**Perth**

**27 May 2004**

Your Honours

Your Worships

Ladies and Gentlemen

I acknowledge the Nyoongar people as the Traditional Owners of the land on which the Supreme Court stands and I particularly thank Mr Ben Taylor, a respected Nyoongar Elder, widely known as "Uncle Ben", for his welcome to country. I also particularly wish to welcome Wally Maguire, another highly respected Nyoongar Elder as well as all of our indigenous brothers and sisters to the Supreme Court. As some of you may know, it has been my privilege and pleasure to be the Patron of the Sorry Day Committee, which was formerly the Bringing Them Home Committee.

It was 55 years ago that I first spoke to an Aboriginal person during a period in the Children's Hospital. I was aged 10. My bed was on a verandah facing East. In the bed next to me was an Aboriginal girl from the North West. It was from her that I first heard about the Dreamtime and what it meant.

In 1957 when I was living in St George's College at UWA, the first Aboriginal student to enter UWA arrived. He was Irwin Lewis, father of the famous footballer. He was himself a great footballer. I saw first hand many of the difficulties which he had to overcome to succeed as he has done.

In 1967, Australians voted in favour of amending the Constitution in a way which enabled the Commonwealth Parliament to make special laws for the indigenous people of Australia. It was nearly a quarter of a century later that the Commonwealth Government established the Council for Aboriginal Reconciliation. In the meantime, the Whitlam Government put the advancement of indigenous people back on the national agenda. Later, two Western Australians progressed land rights issues, namely, the Hon Ian Viner and the Hon Fred Chaney in their capacity as Ministers for Aboriginal Affairs in the Fraser Government. In 1991-1994, the Council for Reconciliation developed an agenda for the changes required to advance the cause of social justice for Aboriginal and Torres Strait Islander people. I congratulate Fred Chaney on his untiring efforts both on the Council and as Chair of Reconciliation Australia. Most of all, however, I congratulate today's generation of Aboriginal people who, notwithstanding all the injustices of the past, show a great generosity of spirit and good will to their fellow Australians.

At the time of European colonisation in 1788, the Aboriginal population was estimated to be approximately 300,000 persons spread among more than 500 tribes living on the Australian continent. In the Northern Territory case of *Milirrpurnu* in 1971, the first major title claim, Blackburn J said that the claimant people had a system of law at the time of colonisation which was:

" ... a subtle and elaborate system adapted to the country in which the people lived their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called 'a government

of laws' and not of men, it is that shown in the evidence before me."

Within the next 100 years many tribes had been destroyed after conflict with European settlers. The traditional way of life had mostly disappeared, except for a few isolated groups and the population had been reduced to approximately 60,000 by a combination of killing by settlers and the effects of introduced diseases, poverty and neglect. At the beginning of the Twentieth Century, most Aboriginal people still lived in the bush or in rural areas.

As is said in *Race Relations – Australia and New Zealand A Comparative Survey 1770-1970*" by K.R. Howe, Longman Paull 1977 chapter 6 at 62:

"The Aboriginal population reached a numerical low point in the early 1920s. During the 1930s and 1940s a slow but sure growth in the numbers was witnessed. Subsequent population increased have been more dramatic, rising from some 70,000 in 1947 to the present estimates of 150,000-200,000 a growth rate four times as high as for non-Aboriginals in Australia."

It appears that persons of mixed Aboriginal and non-Aboriginal descent now represent over half the current total of persons who describe themselves as Aboriginals.

Until 1967 Aboriginal and Torres Strait Islander and people were not recognised as full citizens of Australia under the law. In general, they

had no right to vote and no right to consume alcohol. Generations of Aboriginal children were removed from their parents in infancy and raised in orphanages or similar institutions. Aboriginals were not entitled to receive the same wage as non-Aboriginal persons. The position of the Aboriginal people under the law has dramatically improved since the 1960s, but there is still much to be done, including the adoption of all of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Since 1993, the judiciary in Western Australia have participated in a series of cross-cultural awareness programmes and have reached out to Aboriginal communities throughout the State. Hopes for reconciliation were raised in 1991 with the establishment of the Council for Aboriginal Reconciliation. The Council made a series of major recommendations in relation to social justice in that time. The Aboriginal and Torres Strait Islander Commission ("ATSIC") has also made a substantial contribution. Its abolition raises significant questions regarding the future of reconciliation.

The Supreme Court conducted a major seminar on Aboriginal reconciliation and the law in 1998. Corroboree 2000 in Sydney was a landmark for reconciliation mapping the way ahead while noting the achievements so far, capped by the incredible walk across the Sydney Harbour Bridge. I was very privileged to be involved in this momentous gathering when the Council presented the *Australian Declaration Towards Reconciliation* and the *Road Map for Reconciliation* setting out a vision for reconciliation.

The Beyond the Bridge Walk and Rally in the Supreme Court Gardens in 2000 was another very special occasion. These have been followed by the Survival Concerts in the Gardens. While there has been some progress, much remains to be done. I believe that there does need to be an acceptable form of apology for the wrongs of the past and the implementation of a reconciliation plan along the lines proposed by the Council and its successor *Australians for Reconciliation*.

We have a long way still to travel to address the social and economic disadvantages of indigenous people. The idea of a treaty or agreement on reconciliation needs to be vigorously pursued at national, State, Territory and local levels. This involves the development of partnerships and projects which will advance the cause of reconciliation.