

Speech by Les Malezer

Co-Chair Elect

National Congress of Australia's First Peoples

7 June 2011

Let me begin by acknowledging the Aboriginal people, the owners of this land. I deliberately don't say traditional owners because I think ownership is ownership and that we shouldn't settle for a version of ownership that people think of as inferior. So we are the owners of the land and we should constantly remind everybody of that and we should get away from what are token acknowledgements and get down to the real business about us as Aboriginal people, Torres Strait Islander people and our relationship with our territories.

I would like to congratulate Jody on her election as Co-Chair. Jody and I have only had a few short opportunities to meet with each other and talk with each other and it's been quite inspirational and comforting to see that we are sharing a lot of views on things.

I don't know if it was a trial for Jody or a trial for me when I was doing the press announcements at the beginning about the appointments and of course got into media controversy deliberately. I was wondering how Jody was taking all this while she was overseas, what was going in the headlines in the newspaper, but maybe that is something that we will talk about later if anybody wants to ask any questions about that.

I am committed to the organisation and certainly to working closely with Jody as the Co-Chair and with the Board of Directors who we will know soon. I also wanted to congratulate you as the Delegates to this Congress. This is an historical occasion. The two national Co-Chairs elect, the Congress Delegates being together for the first time is the start of a new era. And hopefully a long era of twenty years plus is our objective, however we shouldn't get too far ahead of ourselves and keep in mind that we have got to get through an important initial period.

I would like to thank very much the people who have worked towards establishing the Congress. The people who worked on very diligently in the background when there was a vacuum after ATSIC had been abolished, who got together for national discussions and dialogues and contributed to the ideas. And those people who formed the steering group to shape the structure of the organisation. And of course the workers that have put together this organisation over the last fifteen months, especially the people who have been in the positions of being on the national board to get us to where we are. But of course we have heard today some of the challenges that still lie ahead for us to make this National Congress work but I think it has been an inspirational start and particularly the contribution from the National Congress of American Indians who have told us about their fight for identity and sovereignty and the success they have had since 1944. Hopefully that is something that we all now aspire to.

I also hope that after we finish these three days, the week of the Congress, that people won't just disappear from the Congress but will in fact go back and continue to be a resource and continue to be agents on behalf of the Congress and there has already been a few challenges thrown out there, particularly to increase the membership numbers.

Personally I think that every Aboriginal and Torres Strait Islander person in Australia is our member, there are just those that have signed up already and those that we are yet to sign up. When we talk about our membership, I hope that we are talking in an inclusive way to involve everybody in a positive way.

While I am on that subject, let me also say that I don't mind being controversial and I don't mind throwing out ideas and things there that people might not agree with. I am quite happy to get involved in those discussions and debates and I am quite happy to receive criticisms. So I can expect that these are going to come in and some people can be pretty nasty with their criticisms but I have to smile when they come in because if they are valid, if people have got something that is bugging them, then we should address it and we should get on to it.

I know the Congress already has a complaints procedure in place, but I am hoping that a strong part of us being able to function and include everybody is that we treat those people who are not happy and those people who are critical of the way we are structured or the way that we operate as being also contributors to the future of this organisation. I have got something of a written speech here so I will move through this but it's only about fifteen minute's worth and I am going to elaborate as I go through that.

Let me start off by saying that the topic of our talk is to talk about the year ahead and I think of course for Jody and I it's important that we talk a little bit further than that because we do have to look into the future, this being the inaugural stage of the elected body and that we have to look to where we want to go and where we want to reach in what we are doing. So while we will talk on some of the things that are immediate and I am sure some of the questions that will come at us will be immediate. How we will proceed in the first few steps? I think we also have to sell that vision, I hope that I can help to do that with you.

Let me first bring up ATSIC, the Aboriginal and Torres Strait Islander Commission. ATSIC was a huge organisation, it had four hundred elected representatives, over thirty regional councils and a budget of over a billion dollars. By comparison this National Congress is a baby. We only have a board of eight people that have to carry out the day to day functioning for the National Congress and also we are operating on a budget which I had thought was going to be no more than equal to the budget than the National Aboriginal Conference was operating on in 1983-1985. But in fact when I saw the budget figures go up today I realise that it is much, much less than what the National Aboriginal Conference had so as Jody has already pointed out, there is a limitation to what we can do and we need to focus on those things that are important at the national level. I don't think anyone has the intention that the creation of the National Congress is going to interfere with the operations of existing structures, organisations, governance and so on that exist in our communities.

What we have to do is enhance that process and we have to do it in such a way that we are getting a unity of purpose that we are all starting to push towards the same directions and that we are all getting strength out of that unity that makes us a voice that can't be ignored in the process and that the national congress can play a role of leadership in that. That we can actually give vision, that we can actually give strategy and we can give direction and even policy assistance to all those institutions and structures that we have out there.

While there has been a focus on organisations, I think someone mentioned there are three thousand organisations operating around Australia, we must focus on the way communities operate and people operate together. It's important that we do have leadership in communities, and not necessarily the local organisation; it might be somebody else who takes on new challenges on behalf of the community members.

I also like to talk on how decisions are being made in communities. Some people may have seen that last year, I did a paper about decision making, our participation in decision making in Australia, and some of it was critical of organisations. The decision making roles of our communities were given over to organisations when we started forming them in the 1970s and were taken over by changes in organisation structures where it was really more to respond to government funding pressures – and we had more bookkeepers and accountants running the organisations – rather than the community members who had the needs for the services that the organisations was supposed to be providing.

I was expecting a lot of backlash and maybe the criticism hasn't come yet, but maybe if people go back and read that paper I might get challenged on it but I did really throw the gauntlet down to organisations that they need to get out there and structure to be community controlled and that it is the people in the community that are involved in the running and the decision making that's involved in those organisations.

Also we have had some very bad practices in decision making generated I think by the native title processes that has now become a contest. We are seeing more recently decisions being made about land use agreements and so on coming basically down to the vote of show of hands rather than the consensus model that we have heard about, the consensus model that we use to believe in once that we get places by consensus.

So I won't go on too far on about this but I think that decision making is really where we have got to give a lot of attention to that we need more space, we need more space to work out where we are, where we are going, what we want to achieve and how we are going to do that. We need more space to resolve our problems within our community; that we do have conflict, we do have dysfunction and if we are going to achieve self-determination then we need to have communities that can function properly because without those communities on the ground functioning, we could have all the structures we like at the national level, we are just never ever going to work.

Let me take up at this point the fact that sovereignty was raised this morning. I get challenged quite a bit about why I am not using the word sovereignty and why is that the case, and where do I stand on the issue of sovereignty. I will start by saying that I am a member of the Aboriginal Provisional Government and I have been from the time that the government was formed. The Aboriginal Provisional Government is based upon the concept of sovereignty that at no time our rights to operate a sovereign entity have been taken away and the idea of a provisional government is to represent the sovereign interest of the Aboriginal people until such time as a proper government can be formed. I won't go further into that just simply to say that I am not scared of sovereignty. Perhaps I just don't use the word.

In the work that I have done at an international level since 1996 there is a new word that is used which is self-determination and all of you have heard that. We have used it in Australia and I think the Whitlam Government brought up self-determination when it began in 1973. We heard it again being mentioned during the time of the Hawke/Keating government and we don't hear that word much coming from Government at the moment. It seems to be a more acceptable word and of course now since 2007 it is the core of the Declaration of the Rights of Indigenous Peoples. I use self-determination a lot when I talk about matters because it is actually a term that fits in the human rights framework that the world operates under and presumably the same framework under which Australia operates and I will talk a little bit more about that framework as I go along.

Not many people understand self-determination very well or how it works and in fact, I think it gets misused a lot in Australia because it basically is being used by our people against our own people to say nobody tells me what to do, I am my own decision maker. That's not the definition of self-determination, that's the definition of anarchy.

Self-determination is, in fact, when we all pull together as peoples operating together collectively as peoples. It's not about everybody refusing to listen to anybody else or being told how to operate by anybody else. More recently in the dialogues I have been having, particularly here in Australia, I have been talking about decision making because when you think hard about it, the exercise of decision making is in fact the exercise of self-determination and this is the exercise of sovereignty and perhaps some of the things that I will talk about further in this presentation might make that a little bit more clear.

Let me talk a little bit about the Congress. I have already mentioned about how we are a small organisation compared to ATSIC, the organisation that we are succeeding. We are trying to achieve a lot but in an economical way and in a focused way. In this week, we only have one week in the year to unify and build the national agenda and to try and give enough instruction to allow the elected Board of Directors who will administer the Congress until the next Congress meets in 2012. Personally I have a hope that in fact you will be able to reconvene in the meantime but that is a budget question and also for the other board members as to what they think but I am hoping that we will be able to re-engage with the Delegates in a meaningful way, particularly to give you more voice and more opportunity to present ideas that you may have in the meantime.

I think there are a number of commitments we need to make at the Congress level. These we have already had some presentations on, for example, the people who are going to be seen as the figureheads of the Congress have to be seen to be operating at the highest level. Now we have heard the Ethics Council talking about the ethics that we must apply and the Nolan Principles and I believe in those entirely. I am not a great believer in having somebody else in the Ethics Council looking over our shoulders, to tell us how to operate, however that is a matter of structure and I am not going to worry about that too much. But I really think that ethical conduct has to be internalised, it has to be something that each one of us who holds a position have to take on and do responsibly and I am hoping that I will be able to demonstrate that myself in my role as the National Co-Chair, but I would expect that all the members of the board themselves will internalise and take on a personal commitment to ethics including hard work. It's not just about doing the right thing or not be seen doing the wrong thing but also about doing as much as we can while we have this position of responsibility on our shoulders.

I would like to move on to talk about the UN Declaration on the Rights of Indigenous Peoples. When I stood for my candidacy as the National Co-Chair, I said that I would like the Declaration to be the central pillar of what we stand for in the National Congress. It upholds self-determination and it has a number of rights which are the collective rights belonging to peoples. I will point out one of the problems that exists about the Declaration.

There are 46 articles and 22 preambular paragraphs, and I will point out for people who do read the declaration regularly, that the 22 preambular paragraphs are just as important as those 46 articles. They are preambular paragraphs because they are already accepted rights and standards that appear in other international standards and treaties. So they are just simply a re-statement of those same standards but they are very relevant to Indigenous peoples and very relevant as collective rights. What the declaration doesn't promise us, or anybody around the world, any Indigenous peoples, is that it doesn't promise us the standard of living that we would hope to aspire to.

In Australia of course we are looking to close the gap to have equality with all other Australians in terms of housing, health, education, employment and so on. But the Declaration doesn't promise that although it does talk about non-discrimination, it does talk about quality. What it promises is empowerment, it promises us the power to make our own decisions, the power to determine our own future. The power to determine continuity of us as peoples, that our culture that we inherit that we pass it on, that it continues on, it's guaranteed into the future. So implementing the Declaration as it stands it doesn't mean that all of a sudden our housing is going to improve or that even our health is going to improve and I hope that those things do happen, I just simply want to point out that the Declaration as itself is about empowerment of us as peoples and I think that as Jackie presented early this morning, it's all about being in control and being able to make the important decisions about us and about our futures.

The governments constantly remind us that the Declaration is a standard and it's only aspirational. It's a standard to be promoted and perused but it's not necessarily an obligation to be achieved. While everyone keeps on hearing the declaration is not legally binding upon governments, only a handful of people are actually aware that the Declaration is in fact a handbook for the implementation of a number of human rights which are already part of the treaty obligations of Australia and other governments around the world.

For example the International Bill of Human Rights is a collection of three instruments: The Universal Declaration of Human Rights, The Covenant on Economical Social and Cultural Rights and the Covenant on Civil and Political Rights. Australia is committed to all of these. These instruments already make the rights contained in the Declaration legally binding upon most governments including Australia. Australia is by the effect of these multi-lateral human rights treaties which it has signed over forty years ago, bound to the rights that are contained or the rights that are contained in the Declaration on the Rights of Indigenous Peoples whether it likes to admit it or not. The two covenants in particular can be taken into account along with another treaty which is the International Convention on the Elimination of all forms of Racial Discrimination and if you put those three treaties together, they cover most of the 46 rights or articles covering rights that are contained in the Declaration.

So the Declaration as I said is really only a blueprint or a handbook or a guideline as how to implement rights, it's not a claim of rights that don't already exist and the Declaration states rights that are already enjoyed by peoples all around the world but those rights that are taken for granted. I will give you an example, the peoples of Australia, which is the population of Australia, already exercise the right of self determination. They already exercise the right of self-governance, they elect the parliament, the institution of the people they make the laws under which they live and so on.

This is the exercise of self-determination. However, these are the sorts of rights that Indigenous peoples have been denied, and in Australia of course since 1788 we have been denied those rights. We have been denied the right to choose our own representatives, we have been denied the exercise of our institutions, we have been denied the right to choose our own languages, we have been denied the right to choose our political status etc. But all of these rights as I said are fundamental rights which people most often don't think about but which we have been denied and that is why we have to be very tenacious about pursuing them.

Accepting the Declaration as a handbook for government and for Indigenous peoples' relationships I believe the priority task for the new Congress is to establish a strong, committed and formalised partnership with Government of Australia. That is not so difficult to achieve as there is already a good template for an agreement that was adopted in 1992; the National Commitment to Improved Outcomes was something signed off by all governments in Australia and by ATSIC and had placed ATSIC fairly in a role of being a decision maker along with other governments about national policy, service delivery and roles. Of course that template of 1992 needs to be modernised but it helps establish one principle that I believe the Congress must insist upon, that is we should not go backwards from any benchmark that has been established in Australia in the recent past.

In some part, the obligations of governments have already been raised through this current review, the review of the Constitution of Australia for Recognition of Aboriginal and Torres Strait Islander Peoples. This is an important review. I have been one of the people who have been cynical and sceptical about it. Does it detract from our push for a treaty? Will it just be a waste of time for three years for a referendum that is going to be a fail at the end of it and so on. It is alright to be cynical but at the same time we have to treat this as an opportunity and we have to work out how to take advantage of this opportunity.

Ultimately the test of what is going to happen at this Constitutional Review is going to come through a referendum of the population of Australia. In my opinion, it is a big challenge to make sure that the public in Australia are mature and informed enough to vote wisely and positively on the kind of rights that have been intentionally and systematically denied to the Aboriginal and Torres Strait Islander Peoples for over two centuries. So if we are going to get recognition of rights that have been deliberately that as I said systematically denied to us then somehow we have got to ensure that we have a public that is mature and is informed and it is a big task but it's not one we should shy away from.

Understandably the reaction to the Constitutional Reform from our people, from Aboriginal and Torres Strait Islanders, leadership is varied and cautious from bad experiences in the past. From having seen political threats and betrayals at every turn in our history.

The National Congress is going to spend half a day tomorrow looking at the Constitution of Australia and considering the option of reforms. Our response to this review, that is the National Congress, is going to have a big impact upon the credibility and the effectiveness of the Congress and it will take some experienced and wise heads in the Congress to take us through this issue. Not only this year but I think over the next two years. So we are going to have to look at this very carefully and cautiously.

My comment to the Board will be to say that we have to be careful that we don't commit the Congress into the hands of the expert panel, that we do have a Congress position on this. We should support the expert panel, we should take advantage of the opportunity but at the same time we still be able to stand up for what our interests are as Aboriginal and Torres Strait Islander Peoples and that we have the support from the community upon that. So I see that as being one of the big challenges that has been hoisted upon us, I know that Australia is going to appear before the United Nations tomorrow to talk about how it is going ahead with the Constitutional Review to address many of the issues of Aboriginal and Torres Strait Islander people. So the Government is committing itself to us succeeding in that process.

Now let's talk a little bit about the Government and its obligations under the Declaration. Seriously the Government must provide evidence to us that it is serious about implementation of the rights and the Declaration. I was a few hours ago reading the report that the Government is giving the United Nations tomorrow and the Government is saying that it is willing to promote the principles contained in the Declaration. It's deliberately not using the word "implement" for rights that are contained in there. So we have to really get the Government to be clear about what it is talking about. The Government is talking about that it's already implementing the spirit of the Declaration in its policies and governance and so on and I think some of us would be very cynical about that point of view. So we have to get the Government committed to the sort of directions that we want and we have to find a way to do that.

Jody has already mentioned the fact that we are keen to go to the Prime Minister first and have the Prime Minister acknowledge the Congress and commit to the Congress before we start dealing with Government Ministers and I feel very strongly about that. If we are as important as they say we are if they go to the United Nations and talk about the National Congress as their answer to self-determination, then we need the Prime Minister to be in the picture somewhere along the lines. I go back to point out where the President of the USA with the National Congress of American Indians, made the statement of supporting the Declaration personally. He also committed to his annual meeting with the Native American leadership and he also called upon his agencies, the bureaus of government to provide briefings to the White House on how the Declaration will impact upon their portfolios. Those things have not yet happened in Australia even though Australia did commit to the Declaration a year before the US.

We also have some things going on in Government that you all may not be aware of, now that the Government has committed itself to the National Human Rights framework. This was a commitment made before the last election when the Government decided it wasn't going to proceed with a Human Rights Act. But they committed to a framework and there are elements of that framework which I have been looking at closely which I think provides us with opportunities to look at ways of implementing our rights through these international obligations.

The framework is a blueprint for ensuring that Australia's obligations under International Human Rights Treaties are effectively implemented in domestic law, government policies and administrative operations. A new Human Rights Action Plan is to be prepared over the rest of this year. The Government is committed to engage in this exercise in conjunction with civil society representatives and hopefully they will also commit to that with the National Congress. The Congress may choose to utilise the development of the National Human Rights Action Plan as an opportunity to set out the steps for implementation of the Declaration on the Rights of Indigenous Peoples.

In addition to the Declaration, there are two other incentives or guidelines on how this action plan might address the rights of indigenous peoples.

The first of these is this program of action which was designed for the Second Decade of the World's Indigenous Peoples. That second decade was declared to operate from 2005 to 2014. So we are just past half way through the decade, however, a mid term review of the decade which was presented to the General Assembly last December showed that nothing has happened around the world by the governments to implement the program of action. I won't go into the details about that but the program of action was very much about partnerships being formed and Indigenous peoples being involved in decision making and so on. What you might be interested to know is that the General Assembly has also made a resolution that there is a World Conference of Indigenous Peoples in 2014 and at the international level where we are engaged in the discussions of how that world conference will be conducted and how we will get involved in that. That is something about which we will keep you posted.

The second incentive for the Government to commit to the declaration is ILO Convention 169. That is a convention of the International Labour Organisation. It's a Convention adopted in 1989 on Indigenous and tribal peoples. It's a treaty but it's a treaty that's owned by governments, unions and the private sector, which is the structure of the International Labour Organisation. Australia hasn't yet ratified that convention but it's been recommended that they do ratify, and in its report to the United Nations tomorrow the Government will say that it is committed to working towards implementation of that declaration. It's one of the things that we can be pursuing.

However my last and most important message about the steps to be taken to implement our rights is how Aboriginal and Torres Strait Islander people in Australia will go about implementing and taking on the Declaration. I have already mentioned about the exercise of self-determination. That it is only through a discipline coming in with our communities to stop fighting with each other to stop showing how strong we are against each other and start showing how strong we are against the Government and those that oppress us. This is where a discipline is needed.

All of you probably have had your own experiences of how our communities will splinter and fracture, and how one side is always ready to go off to the Minister and point at the other side in order to get the satisfaction that they want. We have to stop doing that. We have to stop being used as the pawns in our own oppression and start to think about how our discipline applies amongst ourselves to have national unity and strength. For that to happen of course the Congress itself has to be a strong body. It has to be a body that has clear messages, it has to be a body that has commitment and it has to be a body that is prepared to get out there and communicate with our people on the ground.

There are many different parts of the Declaration which should be read carefully such as the right to choose our political status. So here we are going into this constitutional review and in Australia we still haven't determined what our political status should be. We have people standing for elections in parliaments in the states, or in the federal or local governments who are considering that our political future is going to be by assimilating into the political system of Australia. There are other people, particularly in communities, who are trying to have community self governance, who are trying to look at a form of governance which is the governance of the people consistent with the institutions and the cultures and peoples concerned locally on the ground. We haven't really answered that question as a peoples. What is our political status? Of course it has already been raised here about a treaty, that people believe that our political status should be determined by a treaty, a contract of the government which establishes what our relationship is with the government and so on. Of course this is a big conversation on its own. I am not going to go further into it. But we haven't yet really decided what our political status in this country should be.

We haven't really looked closely at the rights to self government or autonomy that while the Declaration talks - I think it's in Articles four and five - about self-government and autonomy. We have seen our community governance being overtaken by new structures, shire structures which are mainstream structures where communities are losing control of their own territories and their own services and so on. So we haven't really challenged our right to self government. We still have a long way to go in our right to manage our territories and resources and particularly our resources and the rights to own and control our culture and our cultural heritage - which Jody has already referred to. These rights require strong institutional structures and discipline amongst the people themselves. Yes we have got legal services, housing services, health services and so on but we are not so strong in terms of having self-governance or cultural institutions to further our futures. If these matters are not carefully considered and not factored into implementation, or the right of self-determination then our bid for our rights under the Declaration will fail.

I would like to invite you all to look at Article 35 of the Declaration. That article says Indigenous peoples have the right to determine the responsibility of individuals to their communities. Now most individuals in our communities would refuse that and say "nobody can tell me what to do, I have self-determination." However it's clearly saying that Indigenous peoples have the right to determine the responsibilities of individuals to their communities. To me that's a sign of a peoples. If that discipline doesn't apply then we are not peoples we are just simply operating under the auspices of the national government.

Fundamentally the message I will take to Congress is that we will not achieve self-determination without establishing strong national discipline to work in unity and cohesion. National unity is the goal; strength of leadership is the challenge. It should not be the goal of Congress to govern the everyday lives of our people. That should be achieved through local community self governance where communities are in control of their territories and their immediate circumstances. There is a priority task of the Congress to address national self-determination in a context and process that empowers local communities and local decision making.

If the Congress can take care of the big things at the national level then our development as individuals and as peoples will happen through effective local leadership and discipline. I hope this message will carry through the National Congress and that we can present a powerful statement for the future of Aboriginal and Torres Strait Islander peoples of Australia.

Again I will finish up by saying we should be looking into the long term future. In North America, you heard it mentioned this morning, when they look at any proposals, any policies that are going to happen in their communities, they use a seven generations rule that basically say how is this going to benefit our people in seven generations time? I wonder what we will see if we look ahead in seven generations as to where we are going and what we are doing - and should this be our objective. Thank you very much.