Bishop Putney, Ladies and Gentlemen

I join with you in acknowledging the traditional owners of this place. It is an honour and a pleasure for me to speak here this evening. I come among you to thank you, and to pay tribute to you for the example and inspiration you have been to the nation during these difficult weeks. You have been true ambassadors for reconciliation. The Palm Island trial has tested us all in our commitment to justice and reconciliation, respecting each other and the rule of law. I was to be here as Bishop Putney’s observer at the trial. Alas, my kidneys and liver precluded my attendance. Thanks to your prayers and good wishes I am now well on the mend.

Coming here this evening, I noticed a large neon birthday cake for the 21st birthday of Jupiter’s Casino. I think this is the first time I have been to a casino with a bishop. It was about 21 years ago that I used to visit Far North Queensland regularly making my way to the remote Aboriginal communities for ongoing consultations about land rights and community government. I often stayed at the bishop’s house in Cairns. John Bathersby, now Archbishop of Brisbane, was then the newly appointed bishop of Cairns. Coming down to breakfast one morning, I asked him what was on his agenda for the day. He was a little despondent, replying that he had to attend a meeting of the ministers’ fraternal. I have always believed in trying to cheer up bishops over breakfast, so I remarked that such ecumenical activity was a good and worthy thing. Bishop John said, “Yes, but they want me to sign a letter opposing the building of a casino.” I thought that was not such a bad thing either. He scratched his pate and lamented, “But it’s a bit hard when your old man was an SP bookie.” It takes all types in this world and in our church.

Now that the politicians have flown out of Canberra and back home for the winter, it is time to take a deep breath and ask what can be achieved by John Howard’s announcement of a Commonwealth takeover of Aboriginal communities in the Northern Territory.

There can be no quarrel with the desire to act urgently to assist children in need. Everyone wants to heed Noel Pearson’s wake up call to the nation: ”Ask the terrified kid huddling in the corner when there is a binge drinking party going on down the hall if they want a bit of paternalism.” It has to be the kind of paternalism that actually helps.

The Prime Minister has said, “We are dealing with children of the tenderest age who have been exposed to the most terrible abuse”. He asks, “What matters more: the
constitutional niceties, or the care and protection of young children?" It is not a choice of one or the other. There are grounds for suspecting the complex motivations of government which puts the choice that starkly. Canberra cannot care for and protect these children if it rides rough shod over the constitutional niceties of relations with Darwin. Canberra must co-operate with Darwin. In the end, Canberra cannot deliver helpful paternalism to these terrified, huddled children without Darwin’s co-operation.

The children must come first in this analysis. The objective is the provision of a sustainable solution to this national scandal. While there can be no doubting John Howard’s commitment to helping these children, we know that he also has an eye on his re-election.

In 1978, John Howard sat at the Cabinet table when Malcolm Fraser decided that the Commonwealth would intervene in Queensland. The Commonwealth Parliament passed the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978*. There was conflict with Joh Bjelke-Petersen’s government over two Aboriginal communities, Aurukun and Mornington Island, which had been conducted as Presbyterian missions. In the end, Fraser had to back down because Joh called his bluff. Joh knew that the feds could not deliver teachers, nurses or police on ground for just two remote Aboriginal communities in Queensland. Canberra could not back its rhetoric with resources on the ground.

In those days there was a Commonwealth Department of Aboriginal Affairs. Now there is no Commonwealth department specialising in Aboriginal service delivery or policy. Back then, there was an elected National Aboriginal Conference set up by the Commonwealth Government to advise on these issues. Since the abolition of ATSIC, there has not been any elected Aboriginal advisory body to government in Canberra. Over the last eleven years many of the key indigenous leaders have felt burnt off by the Howard government.

Now without a Commonwealth Aboriginal Affairs department, without an elected Aboriginal advisory body, and without a bank of trust between the Commonwealth government and a broad cross section of indigenous leaders, Canberra wants to help not two but 60 remote Aboriginal communities in the Northern Territory. The government has appointed the distinguished Western Australian magistrate, Sue Gordon, to chair its taskforce. It is no discourtesy to her to point out that the Northern Territory communities and their leaders are not her native turf.

Canberra cannot reach, let alone help or rescue, the terrified kids huddling in these remote corners without the full co-operation of the Northern Territory government, the Northern Territory community and the Northern Territory Aboriginal leaders.

The political edge is in the announced intention to amend the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Northern Territory (Self-Government) Act 1978*. The Howard government would be much more likely to bring the NT government and community aboard if it were to leave the self government law well alone. It would be much more likely to bring the NT Aboriginal leaders aboard if it were to leave the Land Rights Act well alone.
If the children are to be helped long term, the NT players have to be treated respectfully by Canberra. If Canberra forces hands in the Northern Territory by amending these two key statutes without NT request and approval, there will be good grounds for suspecting that Canberra is not just on about helping the kids.

In the short term, Canberra may be able to co-ordinate a health audit of the children by flying in assistants from throughout Australia. But nothing sustained will be achieved unless Canberra and Darwin work hand in glove. Whatever of the Northern Territory’s past intransigence, everyone now admits the need for urgent action. It would be very regrettable if the children were made to suffer because of an ideological desire to amend the constitutional niceties of self-government and land rights in the Northern Territory. Persons performing functions in accordance with Northern Territory laws already have guaranteed access to Aboriginal communities. There is no need to amend the land rights legislation. Canberra can gain access to the huddled children without winding back the self-government of the Northern Territory. Canberra will not reach the huddled children without the assistance of the self-governing Northern Territory.

It is not political cynicism to point out that John Howard has not always put the children first when his own political future has been at stake. Let’s make sure that the children continue to be put first this time regardless of other political agendas which might also be at play. The focus should now be on joint co-operation between Darwin and Canberra. Any request to amend land rights and self-government legislation should emanate from a joint press conference by Clare Martin and John Howard. The children will not emerge from their terrifying huddle unless the state and territory police, nurses and teachers are there at hand, regardless of what Canberra says or legislates. If John Howard wants to suggest that the children cannot be reached without forced changes to these constitutional niceties, we are right to be suspicious about other Canberra agendas at play. For once, even in election year, let’s put the children first and ensure that any paternalism extended to them will actually deliver long term care, nurture and protection.

You, the indigenous community, indigenous leaders and your supporters now face a difficult task – to keep the politicians and the media focussed on the children, rather than pursuing concurrent political agendas which could end up putting the children at risk. You need to remain resolute of purpose, patient, and hopeful, as you were in the heady days of the early 1980s. All the older generation in this room recall the heady confrontations with Joh Bjelke Petersen and Pat Killoran in the struggle for Queensland land rights and community government on the reserves. Back then, young leaders from Palm Island like Tom Geia and Rachel Cummins led the charge, appearing on national television prior to the Brisbane Commonwealth Games and challenging the misrepresentations made by government and their media chorus. Remember, keep it local. Keep to the facts. Be principled. Don’t overstate your case. Be committed to dialogue with your neighbours even when the media is selling a government message rather than communicating diverse community perspectives.

It is heartening to see the strong statement issued yesterday by our bishops setting down the right principles and pledging ongoing church commitment to addressing these challenging issues. I am delighted to hear that Bishop Putney has been instrumental in the finalisation of this statement, taking his riding instructions from
your newly formed Indigenous Catholic Council. The Church always speaks and acts more authoritatively when our bishops are guided by persons like Thelma Geertz and her fellow Indigenous Catholic Council members.

Let me now offer some observations on the recent Hurley trial here in Townsville. I do so with gratitude and respect, having been inspired by your dignified response to the convoluted legal processes and the recent verdict. Leanne Clare, the Queensland Director of Public Prosecutions, came here to Townsville and met with the Doomadgee family ten days before Christmas last year. She then issued a statement saying, “On the evidence, the fall is the only satisfactory explanation for the injuries identified by the doctors. In other words, the admissible evidence suggests that Mr Doomadgee’s death was a terrible accident.” She went on to assert that “the evidence speaks for itself”. She ended with this plea: “I ask everyone to take the time to consider what I have had to say and the legal reasons that compel it.”

On the evidence as we now have it, this death was either “a terrible accident” or it was caused by a deliberate application of excessive force by an arresting police officer. Sir Lawrence Street was unable to be as certain as Leanne Clare. Even before the trial, the admissible evidence included prior inconsistent statements by Mr Hurley in which he denied having fallen on Mr Doomadgee. He constantly claimed to recall having fallen directly on to the floor, beside Doomadgee. He had told the investigating officers that he had ended up on his knees beside Doomadgee. Only once the medical evidence at the coronial inquiry made clear that Mr Doomadgee had died from a ruptured liver (ruptured only after the deceased was taken from the police car through the doorway of the police station), Mr Hurley changed his statement, informing the coroner, “If I didn’t know the medical evidence, I’d tell you that I fell to the left of him. The medical evidence would suggest that wasn’t the case.” Sir Lawrence said, “A jury could well find that the only rational inference that can be drawn as to the fatal injury is that it was inflicted by Hurley deliberately kneeling Mulrunji in the upper abdominal area.”

Today, the well respected QC Bob Mulholland who appeared for Mr Hurley has published a newspaper article in The Courier Mail arguing that Chris Hurley should never have been charged once the DPP “looked at whether there were reasonable prospects of conviction and found none”. Mulholland thought there was little public understanding “of the different functions between the Coroner’s Court (relevantly, to make findings on the balance of probabilities as to how the deceased person died and what caused him to die) and a criminal court (where strict evidentiary rules apply and proof beyond reasonable doubt is necessary).”

Presuming the jury to have done their job faithfully, we can conclude only that they were not convinced beyond a reasonable doubt that Hurley deliberately elbowed or kneeed Doomadgee when he fell on top of him or shortly thereafter. But in the wake of such a highly tainted police investigation and in the light of Mr Hurley’s recollection of the fall which was at least inaccurate, there can now be no objection to the family’s decision to pursue civil remedies where the court will have to determine not criminal guilt but civil liability. The court will be asked to determine on the balance of probabilities whether Hurley did deliberately knee or elbow Doomadgee in such a way as to rupture the liver, and whether on the balance of probabilities, Hurley
failed to exercise reasonable care in his apprehension of Doomadgee and removal into the police station.

In light of the tainted police investigation and Mr Hurley’s belated admission that he must have fallen on top of Doomadgee, the Townsville and Palm Island Aboriginal communities deserve the highest praise for the restraint and respect for legal processes you have shown since the jury verdict was delivered. All Australians owe you a debt of gratitude. You have been inspirational in this time of adversity. We must now all respect the decision of the family to seek civil redress in the courts. We understand the further anxiety this will cause especially to Mr Hurley and his loved ones. But this anxiety is justified in light of the unanswered questions in your minds when you compare the coroner’s findings and Sir Lawrence Street’s observations with the jury’s verdict and Mr Mulholland’s correct insistence on the difference between criminal guilt proved beyond reasonable doubt and civil liability established on the balance of probabilities. There is now evidence from Mr Hurley that he must have fallen on top of Doomadgee. On the balance of probabilities, did he deliberately elbow or knee Doomadgee in the chest? Did he wantonly use excessive force in trying to get Doomadgee to the cells? These are the unanswered questions. His acquittal following a tainted investigation, an open coronial inquiry and the recommendation of prosecution by a retired judge does not provide the answers. Sir Lawrence Street has said that Hurley’s prior, inconsistent statements about the fall “could be considered by a jury to be untruths told out of a consciousness of guilt and fear of the truth.”

Seeking answers in court, the family and their supporters will further guarantee that never again will the police engage in such a tainted investigation of a death in custody. Such an investigation serves no one’s interests any longer. It works injustice on those detained and their loved ones, and it creates havoc and public odium for the police, especially those suspected of an excessive application of force in making an arrest. There is no doubt that Mr Hurley caused the death of Mr Doomadgee. Hurley was, as Mr Mulholland told the jury, the “instrument of another young man dying and that is a cross he will carry for the rest of his life”. Mr Doomadgee’s family and loved ones are entitled to use the civil law to establish whether the deadly elbowing or kneeling by Hurley was accidental or warranted. If it was deliberate and unwarranted, the family is entitled to compensation.

While respecting the jury’s verdict, we need to acknowledge Gracelyn Smallwood’s remark which reflected the thinking of many of you: “This has not ended the way we wanted it to, but it has been a win on our slow climb up the Everest of justice.”

Without a secure economic base and without assured cultural and spiritual identity, we all know that Aborigines living in remote communities will continue to suffer acute alienation and despair. I have always thought that the work for land rights and self-determination was worthwhile because such laws and policies could provide the time and space for Aboriginal Australians to find and make their place in modern Australia, and on terms that are not dictated solely by the descendants of their colonisers. I have always regarded the next part of the task as the far more difficult. It is not political or national in character; it is spiritual and individual. The secularism, materialism and individualism of Australian society are now more the cause of the problems of identity and well being rather than the wellsprings of any solution. This spiritual challenge is something which is never spoken about publicly
by our politicians or the media. It is the primary task for us gathered here, members of a church honouring our indigenous members who know what it is to struggle and retain hope in the midst of adversity as you have all experienced these recent months with the Palm Island trial and the fierce debate about the Northern Territory initiatives. I salute those like Deacon Monty Pryor who has just celebrated 25 years as a deacon and is about to celebrate with Dot sixty years of marriage. I recall Monty and Deacon Boniface joining Mr Bill Toby at my mass of thanksgiving in Musgrave Park after my ordination 22 years ago. I still proudly wear the stole which the Townsville AICC gave me at that time. Without deep spiritual roots and reachable opportunities for education and employment, you will not endure the flames and take your rightful place again in this land. I join with Bishop Michael in hoping that your newly formed Indigenous Catholic Council “will help our diocese to have the wisdom and to find the means to play a part in assisting Indigenous Catholics and all Indigenous people to find their way forward to a more complete reconciliation and resolution of the issues of injustice”.