

Twelve principles for legal reconciliation of the grievances of Aboriginal descendants

On 9 February 2006 it will be 170 years since King William IV issued Letters Patent authorizing the establishment of South Australia. In 1834 the British Parliament had passed the Foundation Act to provide for the erection of a Province or Provinces in South Australia. Governor Hindmarsh inaugurated South Australia on 28 December 1836 in Holdfast Bay by his legal Proclamation of the Province of South Australia.

Each of these 1836 documents, which were promulgated by the Executive under the Crown prerogative, made extensive provision for the protection of Aboriginal rights.

Regrettably, the legal fulfillment of the purpose and object of their specifically lawful reservation of the rights of the traditional owners in South Australia is yet to occur.

South Australia is still neglecting the ongoing entitlement of the descendants of the traditional owners in 1836 to the fulfillment of the undertaking of the Letters Patent and their partial legal implementation in the 1836 Proclamation of South Australia.

The express terms of the 1836 Letters Patent specifically assert that the rights to be fully maintained include those of the descendants of the traditional owners in 1836.

2006 presents an opportunity to non-Indigenous people in South Australia to redress this ongoing failure today in the human rights of the Aboriginal descendants of 1836.

Twelve principles need to be observed by all government in dealing with these rights:

1. The descendants of the traditional owners of 1836 have the right to be consulted;
2. The rights of the Aboriginal descendants were lawfully recognized by the Crown;
3. Much injustice was visited on these descendants by the overriding of their rights;
4. Legal principles underwriting these rights have been inequitably applied by the Crown;
5. Today's descendants have the right to organize to regain and maintain their rights;
6. South Australia has a public duty and obligation to begin to redress these wrongs;
7. Non-Indigenous South Australians have a right to reconcile with the descendants;
8. An Aboriginal descendant is legally capable of nominating her/his representative;
9. The Crown is obliged to meet with the proper representatives of the descendants;
10. The representatives of the descendants are legally answerable to the descendants;
11. The descendants are entitled to negotiate with the Crown to redress these wrongs;
12. The Crown has a duty for all South Australians to reconcile over these grievances.

The proper redress of these grievances may be undertaken in an entrenched Treaty Act.