

2012 Social Justice and Native Title Reports A Community Guide

A note from the Commissioner



Australian
Human Rights
Commission

In my role as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I am required to prepare two reports on Aboriginal and Torres Strait Islander peoples' human rights issues each year – the *Social Justice Report* and the *Native Title Report*.

Both Reports are tabled in Federal Parliament. They consider major issues in Aboriginal and Torres Strait Islander affairs over the past year and include recommendations to governments that promote and protect the rights of Aboriginal and Torres Strait Islander peoples. This year's Reports are my third as the Social Justice Commissioner.

This Community Guide gives a brief overview of some of the key issues I consider in the *Social Justice Report 2012* and the *Native Title Report 2012*.

The *Social Justice* and *Native Title Reports 2012* identify key national and international developments affecting Aboriginal and Torres Strait Islander peoples over the past year.

The Reports also focus on the importance of Indigenous governance and how it can enable Aboriginal and Torres Strait Islander peoples to realise our social, cultural and economic development aspirations.

As Aboriginal and Torres Strait Islander peoples, we must take control of our governance with the support of our organisations. But governments must also take action to:

- ensure our participation in decisions that affect us
- engage with our communities in a culturally safe and culturally secure manner.



Aboriginal & Torres Strait Islander Social Justice Commissioner

Mick Gooda is the Aboriginal and Torres Strait Islander Social Justice Commissioner. Mick commenced his term in February 2010.



Aboriginal & Torres Strait Islander
Social Justice Commissioner

Mick is a descendent of the Gangulu people of central Queensland.

As Social Justice Commissioner, he advocates for the recognition of the rights of Aboriginal and Torres Strait Islander peoples in Australia and seeks to promote respect and understanding of these rights among the broader Australian community.

Mick has been actively involved in advocacy in Aboriginal and Torres Strait Islander affairs throughout Australia for over 25 years and has delivered strategic and sustainable results in remote, rural and urban environments.

His focus has been on the empowerment of Aboriginal and Torres Strait Islander peoples. Immediately prior to taking up the position of Social Justice Commissioner, Mick was the Chief Executive Officer of the Cooperative Research Centre for Aboriginal Health for close to five and a half years. Here, he drove a research agenda which placed Aboriginal and Torres Strait Islander people 'front and centre' in the research agenda, working alongside world leading researchers.

Please be aware that this publication may contain the names or images of Aboriginal and Torres Strait Islander people who may now be deceased.

Indigenous governance

What is Indigenous governance?

Indigenous governance is about how we organise ourselves and make decisions about our lives in a culturally relevant way. Effective governance for Aboriginal and Torres Strait Islander peoples needs to start with us – with our peoples and with our communities.

Governance is the traditions (norms, values, culture, language) and institutions (formal structures, organisation, practices) that a community uses to make decisions and accomplish its goals. At the heart of the concept of governance is the creation of effective, accountable and legitimate systems and processes where citizens articulate their interests, exercise their rights and responsibilities and reconcile their differences.

National Centre for First Nations Governance, *Governance Best Practices Report* (2009), p vii.

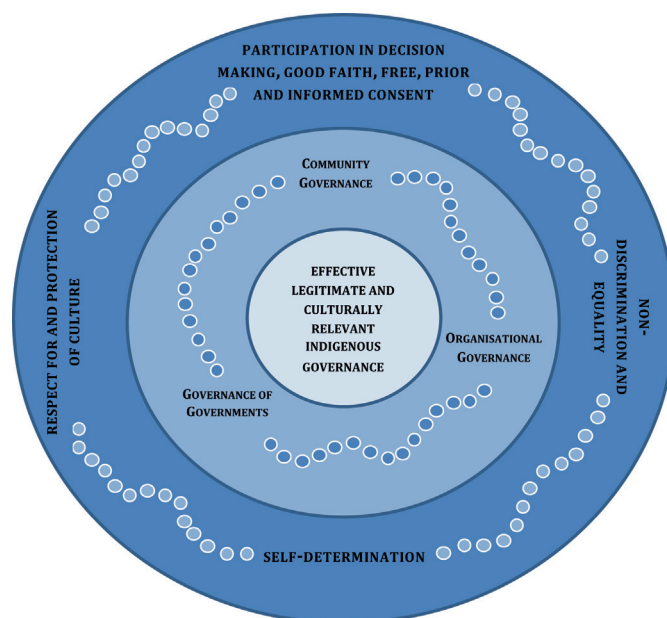
What enables effective Indigenous governance?

There are three connected components that enable effective governance in Aboriginal and Torres Strait Islander communities:

- community governance
- organisational governance
- the governance of governments and other external influences.

To be effective the three components must be grounded in human rights.

This diagram illustrates how the human rights principles in the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration) underpin our Indigenous governance. The dots represent the storylines and interconnected relationships between these principles and between the three components of community governance, organisational governance and the governance of governments.



Through this framework, communities can see what they need to focus on to build governance capacity within our own communities and organisations.

External parties, such as government, can also see their role and how they can best contribute to Aboriginal and Torres Strait Islander peoples achieving our community aims and priorities.

A human rights approach to Indigenous governance

The Declaration can be used to provide practical guidance on governance in Aboriginal and Torres Strait Islander communities.

Governance must be underpinned by the key principles in the Declaration.

Self-determination

Self-determination is about us deciding our own economic, social, cultural and political futures.

Self-determination can be achieved if we have good community governance. This means ensuring effective, culturally relevant and legitimate processes that allow Aboriginal and Torres Strait Islander peoples to talk about their interests, exercise their rights and responsibilities, and resolve their differences.

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 3, United Nations Declaration on the Rights of Indigenous Peoples.

Participation in decision-making

Effective participation in decision-making involves three key elements:

- duty to consult
- good faith
- free, prior and informed consent.

Together, these elements mean Indigenous peoples must be recognised and treated as important stakeholders in the development, design, implementation, monitoring and evaluation of all policies and legislation that impact on our well-being.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 19, United Nations Declaration on the Rights of Indigenous Peoples.

Respect for and protection of culture

The Declaration sets out our right to maintain, protect and practice our cultural traditions and cultural heritage. This includes providing effective mechanisms to protect:

- our integrity as distinct peoples
- our cultural values
- our cultural, intellectual, religious and spiritual property
- our children's access to an education in our own language.

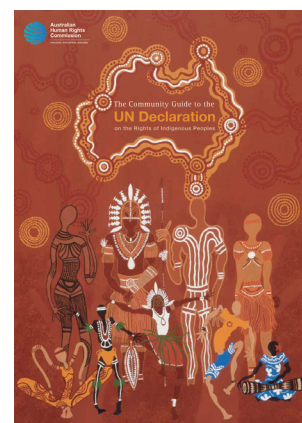
Culture within the context of our governance is about enabling us to continue our customary and historical – as well as our contemporary – ways of organising ourselves and making decisions about matters that affect us.

Non-discrimination and equality

The Declaration provides for our right to non-discrimination and equality. This includes government's responsibility to take effective measures to protect our right to non-discrimination and equality, and prevent racial discrimination.

The principles of non-discrimination and equality mean that we should be able to govern ourselves without discrimination from individuals, governments and/or external stakeholders.

To achieve effective Indigenous governance, we must embrace these principles and acknowledge that our governance is an interrelationship between our peoples and communities, our organisations and governments.



A framework for effective governance in Aboriginal and Torres Strait Islander communities

Community governance

Community governance is the way we can decide:

- what we want to achieve
- how we want to organise ourselves to achieve it.

Community governance allows us to determine who can speak when, for whom, to whom and about what on behalf of a community. It must ensure participation and respect the ideas of all members of the community, particularly those most vulnerable. Community governance should draw on and respect our strong cultures and traditions.

Effective community governance provides the foundation for our organisational governance and should guide government's actions.

Effective Indigenous governance must start with us – with our peoples and our communities.

M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2012*.

Organisational governance

Organisational governance enables our organisations to get things done.

To be effective, our organisations must be seen as legitimate by both communities and governments. Organisational governance allows our organisations to have this legitimacy.

Effective organisational governance must align with community governance. It must be accountable to and have the capacity to engage with community as well as governments and external organisations. This means that organisations must have sound corporate governance structures and processes, including rules, reporting processes and dispute resolution mechanisms.

Governance of governments

Governments must support, enable and empower Aboriginal and Torres Strait Islander peoples and organisations. In doing this, governments must reflect on their role in communities. They must look to remove barriers to effective governance as well as provide support to our organisations. To do this, governments must:

- recognise that empowerment is vital to achieving the goals of Aboriginal and Torres Strait Islander peoples
- ensure government processes support strong community and organisational governance
- respect and support our decision-making processes
- reform funding and reporting processes to reduce unnecessary 'red-tape'.

When engaging with Aboriginal and Torres Strait Islander communities, governments must:

- provide relevant information in a culturally appropriate manner, including our own languages
- provide us with adequate timeframes to make a decision
- ensure all staff working in our communities are culturally competent
- properly resource organisations so that they can effectively engage with governments.



Governance case studies

Disempowerment in the Northern Territory

Several policy changes by the Australian and Northern Territory governments have affected governance in Aboriginal communities in the Northern Territory. I discuss the significant disempowering impact of these changes in Chapter 3 of the *Social Justice Report*.

Local government reforms

In 2008, local government reforms occurred in the Northern Territory. This involved about 60 Community Councils being amalgamated into eight new Shires. This amalgamation of Community Councils resulted in governance structures being stripped away from communities almost overnight. The implementation of these reforms has resulted in Aboriginal communities becoming disconnected from decisions about service delivery and from their local governments.

The Intervention

At around the same time as the local government reforms, the Northern Territory Intervention began. In its implementation, the Intervention bypassed existing organisations with local knowledge and capacity. This caused significant damage to the overall wellbeing of local communities.

Many Aboriginal and Torres Strait Islander people in the Northern Territory did not distinguish between processes administered by different levels of government. They experienced these policies as one assault on control over their communities. These policies have resulted in widespread disempowerment.

Like the local government reforms, the implementation of the Intervention has caused significant damage to the governance capacity of remote communities in the Northern Territory. The overwhelming evidence to date is that the local government reforms and the Intervention have resulted in disempowerment and distrust.

M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2012*.

The Yawuru Peoples 'Four Pillar Knowledge Vision': informing community governance

The Yawuru Peoples from the Broome region in Western Australia have developed the 'Four Pillar Knowledge Vision'. This is a strategy designed to inform and guide their community governance following their native title determination in 2008 and negotiation of a Global Agreement in 2010. It involves:

Knowing Our People and Community

The process for 'Knowing Our People and Community' began in 2011. It involved a detailed survey of households and aimed to record information about the Indigenous population in Broome. This informs the Yawuru Peoples' investment decisions.

Knowing Our Country

The Yawuru Peoples are using Geographic Information System (GIS) mapping technology to digitally map places of cultural and social significance for Yawuru Peoples. A Yawuru Cultural Management Plan has been produced to inform future research projects and activities on Yawuru Country as well as guide joint Park Management Agreements.

Knowing Our Story

Knowing Our Story is a process of identifying and consolidating the research, commentary and photography that was produced prior to and during the Yawuru People's native title process. This material will be organised and placed into a Yawuru Centre for Knowledge to inform future generations about the Yawuru Peoples and their Country.

Building Our Economic Prosperity

The Global Agreement resulted in the Yawuru Peoples being the largest single landowners in Broome. Yawuru Peoples have responsibilities to manage these land holdings and to use them to establish the economic foundation for the Yawuru into the future. This requires building economic capacity within the community and careful planning.

By informing themselves about their community, their country, their stories and potential economic opportunities, the Yawuru Peoples are able to make decisions about achieving their objectives.

The year in review

In the *Social Justice and Native Title Reports 2012*, I review key developments from the past year.

Social Justice Report 2012

As this is the 20th annual *Social Justice Report*, I reflect on the role of the Reports over this time. I then review the significant events that have occurred over the past year.

These include international and national developments such as:

- the involvement of Aboriginal and Torres Strait Islander peoples advocating for the rights of Indigenous peoples at an international level
- the visit by the United Nations Special Rapporteur on violence against women which focussed on Aboriginal and Torres Strait Islander women
- the National Human Rights Framework, including the establishment of the new Parliamentary Joint Committee on Human Rights
- constitutional recognition of Aboriginal and Torres Strait Islander peoples
- Stronger Futures in the Northern Territory
- the indefinite detention of Aboriginal and Torres Strait Islander peoples with cognitive impairment in the criminal justice system.

Native Title Report 2012

A significant anniversary during the past year was the 20 year anniversary since the High Court of Australia handed down its decision in *Mabo v Queensland*. This decision acknowledged our lawful place as the First Peoples of Australia and created the unique form of land tenure set out in the Native Title Act.

There have been significant discussions around legislative reforms to the Native Title Act during the past year. I welcome these proposals as they provide a more flexible approach to native title. But it is critical that further changes are made to reverse the significant burden on Aboriginal and Torres Strait Islander peoples to prove our connection to our traditional lands, territories and resources continues to exist.

In the Native Title Report, I review the following reforms:

- the Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011

- the Indigenous Economic Development Strategy (2011–2018)
- land reform measures introduced under the Stronger Futures legislation in the Northern Territory
- native title institutional reforms involving the roles of the Federal Court of Australia and the National Native Title Tribunal
- the Carbon Farming Initiative.

I also report on international human rights forums relevant to our lands, territories and resources.

Finally, I review the Australian Government's progress towards implementing my recommendations in the *Native Title Report 2011*.

More on Social Justice and Native Title

The *Social Justice Report 2012* is available at: www.humanrights.gov.au/social_justice/sj_report/sjreport12/

The *Native Title Report 2012* is available at: http://www.humanrights.gov.au/social_justice/nt_report/ntreport12/

For hard copies of the Social Justice and Native Title Reports and for additional copies of this Community Guide, call 1300 369 711 or order online at: www.humanrights.gov.au/about/publications/

Please send comments or feedback to: socialjustice@humanrights.gov.au

Dealing with discrimination

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Information about making or responding to a complaint is available at www.humanrights.gov.au. You can also email us at complaintsinfo@humanrights.gov.au