



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

2008

# Social Justice Report



Aboriginal and Torres Strait Islander  
Social Justice Commissioner



Aboriginal and Torres Strait Islander  
Social Justice Commissioner

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### **Cover Photography**

The cover photograph is the work of Pierre Pouliquin. The photo was taken in Canberra, on National Sorry Day, 25 May 2008. The Commissioner is thankful to Pierre Pouliquin for granting permission to use this photo. For other work by Pierre Pouliquin please see: [www.flickr.com/photos/pierre\\_pouliquin/](http://www.flickr.com/photos/pierre_pouliquin/).

The Human Rights and Equal Opportunity Commission's *Bringing them home* report, issued in May 1997, was the result of an inquiry into the separation of Aboriginal and Torres Strait Islander children from their families. One of the report's recommendations was for 'a national Sorry Day (to) be celebrated each year to commemorate the history of forcible removals and its effects'. The first national Sorry Day was held on 26 May 1998 – one year after the tabling of the *Bringing them home* report – and has since been held annually.

The material in this publication includes views and recommendations of individual contributing authors, which do not necessarily reflect the views of the Australian Human Rights Commission or indicate its commitment to a particular course of action.

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



# 2008 Social Justice Report



**Aboriginal and Torres Strait Islander  
Social Justice Commissioner**

**Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner  
to the Attorney General as required by section 46C (1) (a) *Human Rights and  
Equal Opportunity Commission Act 1986* (Cth)**



**Australian  
Human Rights  
Commission**

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**Aboriginal and Torres Strait  
Islander Social Justice  
Commissioner**

# Aboriginal and Torres Strait Islander Social Justice Commissioner

The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established within the Australian Human Rights Commission in 1993 to carry out the following functions:

1. Report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and recommend where necessary on the action that should be taken to ensure these rights are observed.
2. Promote awareness and discussion of human rights in relation to Aboriginal peoples and Torres Strait Islanders.
3. Undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.
4. Examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal peoples and Torres Strait Islanders

The Commissioner is also required, under Section 209 of the *Native Title Act 1993* (Cth), to report annually on the operation of the *Native Title Act* and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

## About the Social Justice Commissioner's logo



The right section of the design is a contemporary view of traditional Dari or head-dress, a symbol of the Torres Strait Island people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The dots placed in the Dari represent a brighter outlook for the future provided by the Commissioner's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.

The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Commissioner and the support, strength and unity which it can provide through the pursuit of social justice and human rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander social justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

© Leigh Harris

**For information on the work of the Social Justice Commissioner please visit the Commission website at: [http://www.humanrights.gov.au/social\\_justice/index.html](http://www.humanrights.gov.au/social_justice/index.html)**



**Australian  
Human Rights  
Commission**

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6 February 2009

The Hon Robert McClelland MP  
Attorney General  
Parliament House  
Canberra ACT 2600

Dear Attorney,

I am pleased to present to you the *Social Justice Report 2008*.

The report is provided in accordance with section 46C (1) (a) of the *Human Rights and Equal Opportunity Commission Act 1986*. This provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner is to submit a report regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the exercise and enjoyment of human rights by those persons.

The report's lead chapter outlines reform measures for the protection of Indigenous peoples' rights. This chapter provides a foundational agenda for the future promotion and protection of Indigenous rights. Chapter 3 reviews the provision of education services in remote Australia with specific focus on the availability and accessibility of education services for Indigenous preschool, primary and secondary school students. Chapter 4 overviews the needs for Indigenous healing and what can be done to support and advance an agenda for healing. Chapter 5 concludes with a review of progress made in addressing Indigenous health inequality since 2005, and identifies future measures required to consolidate and advance the current gains.

Appendix 1 provides a chronology of events for 2007–2008. Appendix 2 provides an updated statistical profile of Indigenous Australians. Appendices 3 and 4 provide information pertaining to Chapter 3 on remote Indigenous education.

The report includes 15 recommendations for government in the areas of Indigenous human rights protection, remote Indigenous education and Indigenous healing; and one follow-up action for the Aboriginal and Torres Strait Islander Social Justice Commissioner on a new National Indigenous Representative Body.

I look forward to discussing the report with you.

Yours sincerely

**Tom Calma**

Aboriginal and Torres Strait Islander Social Justice Commissioner

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## Note – Use of the terms ‘Aboriginal and Torres Strait Islander peoples’ and ‘Indigenous peoples’

The Aboriginal and Torres Strait Islander Social Justice Commissioner recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is not one cultural model that fits all Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

Throughout this report, Aborigines and Torres Strait Islanders are referred to as ‘**peoples**’. This recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their livelihoods.

Throughout this report, Aboriginal and Torres Strait Islander peoples are also referred to as ‘**Indigenous peoples**’.

The use of the term ‘Indigenous’ has evolved through international law. It acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The United Nations High Commissioner for Human Rights has explained the basis for recognising this relationship as follows:

Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants – according to one definition – of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means... (I)ndigenous peoples have retained social, cultural, economic and political characteristics which are clearly distinct from those of the other segments of the national populations.

Throughout human history, whenever dominant neighbouring peoples have expanded their territories or settlers from far away have acquired new lands by force, the cultures and livelihoods – even the existence – of indigenous peoples have been endangered. The threats to indigenous peoples’ cultures and lands, to their status and other legal rights as distinct groups and as citizens, do not always take the same forms as in previous times. Although some groups have been relatively successful, in most part of the world indigenous peoples are actively seeking recognition of their identities and ways of life.<sup>1</sup>

The Social Justice Commissioner acknowledges that there are differing usages of the terms ‘Aboriginal and Torres Strait Islander’, ‘Aboriginal’ and ‘indigenous’ within government policies and documents. When referring to a government document or policy, we have maintained the government’s language to ensure consistency.

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1 United Nations High Commissioner for Human Rights, *Fact sheet No.9 (Rev.1), The Rights of Indigenous Peoples* (1997). At: [www.unhcr.ch/html/menu6/2/fs9.htm](http://www.unhcr.ch/html/menu6/2/fs9.htm) (viewed 8 December 2008).

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# Recommendations

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In accordance with the functions set out in section 46C(1) (a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), this report includes ten recommendations on formal protections for Indigenous peoples' human rights, four recommendations for remote Indigenous education, and one recommendation for Indigenous healing. The report also contains one follow-up action that I will undertake in the next 12 months in relation to providing advice on a model for a new National Indigenous Representative Body. These recommendations and follow-up action are reproduced here and appear at the relevant part of the report.

## An Aboriginal and Torres Strait Islander human rights protection framework for the 21st century

### **Recommendation 1: Statement of support for the *UN Declaration on the Rights of Indigenous Peoples***

That the Australian Government make a statement of support in the UN General Assembly and UN Human Rights Council for the *UN Declaration on the Rights of Indigenous Peoples* as a matter of priority.

### **Recommendation 2: Schedule the *UN Declaration on the Rights of Indigenous Peoples* to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth)**

That the federal Attorney General schedule the *UN Declaration on the Rights of Indigenous Peoples* to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

### **Recommendation 3: Ratification of ILO Convention 169**

That the Joint Standing Committee on Treaties conduct consultations, including with Indigenous peoples, on the desirability of ratifying *ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*.

**Recommendation 4: Government support for Indigenous engagement in Human Rights Act consultations**

That the Commonwealth Government commits to comprehensive support for engagement with Indigenous peoples in the consultation process for a national Human Rights Act.

**Recommendation 5: Scope of rights recognised in a Human Rights Act**

That the Commonwealth Government adopt a Human Rights Act that is comprehensive in its scope and includes:

- recognition of Aboriginal and Torres Strait Islander peoples in the preamble;
- the right to self-determination;
- economic, social and cultural rights and civil and political rights;
- specific protections for Indigenous peoples where required; and
- the *UN Declaration on the Rights of Indigenous Peoples* scheduled as a relevant international instrument.

**Recommendation 6: Recognition of Indigenous peoples in the Australian Constitution's preamble**

That the Commonwealth Government undertake national consultations and begin a constitutional process for the recognition of the special place of Indigenous peoples in the preamble to the *Constitution*. Particular emphasis should be placed on the need for an inclusive, consultative process in drafting a revised preamble prior to a referendum.

**Recommendation 7: Removal of section 25 and making provision for equality and non-discrimination guarantees in the Australian Constitution**

That, in recognition that existing protections against racial discrimination have been overridden in relation to Indigenous peoples, the Commonwealth Government begin a constitutional process for the removal of section 25 of the *Constitution* and its replacement with a clause guaranteeing equality before the law and non-discrimination.

**Recommendations 8 and 9: Framework for the negotiation of a social justice package**

That the Commonwealth Government commence negotiations on a framework for the negotiation of a social justice package to address the unfinished business of reconciliation.

Further, the new National Indigenous Representative Body, once established, be funded and tasked with consulting with Indigenous peoples and representing their interests in the negotiations of a social justice package. The social justice package should be finalised within 3 years of the establishment of the National Indigenous Representative Body.

**Recommendation 10: Government resource the Australian Human Rights Commission for community development and community education programs**

That the Commonwealth Government resource the Australian Human Rights Commission to develop and implement a comprehensive community development and community education programs on human rights for Aboriginal and Torres Strait Islander peoples.

**Follow-up Action by the Social Justice Commissioner**

The Social Justice Commissioner will provide to the Minister for Families, Housing, Community Services and Indigenous Affairs advice on the proposed model for a new National Indigenous Representative Body in July 2009.

## Remote Indigenous education

**Recommendation 11: Provision of comparable education services in remote communities**

That all Australian governments, through the Council of Australian Governments (COAG) commit to providing education services in remote communities that are comparable in quality and availability to those in all other Australian communities.

**Recommendation 12: Government develop a remote education strategy and accountability framework**

That the Australian Government, through COAG, develop a remote education strategy and accountability framework to be embedded in the National Indigenous Reform Agreement and in the relevant National Partnership Agreements.

**Recommendation 13: Audit of populations and projected populations of remote preschool and school-aged children by statistical sub-division**

That COAG initiate an audit of populations and projected populations of remote preschool and school-aged children by statistical sub-division to be measured against the relevant education infrastructure and services. That this audit form the basis of a national, funded plan to upgrade or build quality preschool, primary and secondary school infrastructure where populations warrant them.

**Recommendation 14: Monitoring and assessment processes for remote Indigenous education**

That the strategy and accountability framework include monitoring and assessment processes with performance measures, targets and timeframes. Key areas for reporting include:

- Provision of education infrastructure at the preschool, primary and secondary school levels to meet population requirements by statistical subdivision;
- The establishment of remote education regional partnerships between Indigenous stakeholders and service deliverers;
- Assessments of the remote teacher workforce and its capacity to meet the specific requirements of the students cohort; and
- Recruitment and retention actions to maintain appropriately qualified (Indigenous and non-Indigenous) teachers and leaders.

## Beyond the Apology – an agenda for healing

### **Recommendation 15: Consultations on and establishment of a national Indigenous healing body responsible for developing and implementing a National Indigenous Healing Framework**

That the federal government establish an independent, Indigenous controlled national Indigenous healing body following extensive consultation, which is responsible for developing and then implementing a coordinated National Indigenous Healing Framework. The Framework should be developed in conjunction with the federal and state/ territory governments and Indigenous organisations and communities.

The national Indigenous healing body should:

- be based on the key principles of self-determination, respect for human rights, reconciliation, and adopt a community development approach that is grounded in Indigenous culture and identity;
- have adequate resourcing for long term community generated, and culturally appropriate Indigenous healing services and programs, commensurate with need;
- have a broad range of possible roles and functions including: research, public education, capacity building, training, accreditation, policy review, public reporting and monitoring and evaluation;
- engage with state and territory governments to develop a nationally consistent approach in the provision of financial redress (compensation) for the Stolen Generations.

The national Indigenous healing body should also be funded to conduct educational activities about Indigenous healing to Indigenous communities, service providers and relevant government departments to ensure that the purpose of a national Indigenous healing body is clearly understood.



# Chapter 1 Introduction

---

A united Australia which represents this land of ours; values the Aboriginal and Torres Strait Islander heritage and provides justice and equity for all.

Vision of Reconciliation, Council for Aboriginal Reconciliation.<sup>1</sup>

This is my fifth *Social Justice Report* as the Aboriginal and Torres Strait Islander Social Justice Commissioner. The focus of this year's report is on human rights protections for Indigenous peoples, remote Indigenous education, Indigenous healing and the progress on achieving Indigenous health equality by 2030.

## 1. A time for change

As I reflect on the past eighteen months, it is the National Apology to the Stolen Generations on 13 February 2008 that stands out as the most meaningful moment. The Prime Minister's Apology to the Stolen Generations transformed decades of fear, pain and hurt into a moment of national reconciliation for Australia. The Apology was the first step in setting a bold and ambitious future for Indigenous peoples in Australia.

The Apology was a milestone that marked a change in attitude, a new way of doing business, a new partnership between Indigenous peoples and governments.

Over the last 18 months, there have been changes across most areas of Indigenous affairs. Some communities have had to deal with changes to local government, regionalisation of their representative structures, as well as changes to the Community Development Employment Program (CDEP), Welfare to Work and other welfare programs and reforms to Indigenous education assistance. Indigenous communities have also been dealing with significant changes to the rules that govern Indigenous corporations being phased in, as well as changes to native title laws, issues relating to water rights, environmental protection and climate change, and so forth. I am consistently told by Indigenous peoples that they are overwhelmed by the level and the constant nature of change occurring in their communities.

However, as the federal government has clearly marked, now is the time for change and to borrow the words of Barack Obama, its time to set a vision for 'change we can believe in'.

The reference to Barack Obama is a timely one. The sense of hope and ambition that he has engendered among the American community and across the world is extraordinarily exciting. It is amazing for the feeling of unity and inclusion that it creates.

Obama has been described by a number of commentators as a 'transformational' figure. Transformation is what we also need here in Australia on issues facing Aboriginal and Torres Strait Islander peoples.

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<sup>1</sup> Council for Aboriginal Reconciliation, *The Council for Aboriginal Reconciliation Vision Statement*, [http://www.austlii.edu.au/au/orgs/car/council/spl98\\_20/council.htm](http://www.austlii.edu.au/au/orgs/car/council/spl98_20/council.htm) (viewed 6 February 2009).

## Social Justice Report 2008

The Prime Minister himself has voiced this possibility. In the Apology speech he expressed this hope as follows:

let us seize the day... Let (the Apology) not become a moment of mere sentimental reflection. Let us take it with both hands and allow this day, this day of national reconciliation, to become one of those rare moments in which we might just be able to transform the way in which the nation thinks about itself...<sup>2</sup>

So if we look back to such events at the beginning of the Rudd government, we can see that transformation of this situation is possible and that with leadership it can capture the imagination of the Australian community, unify us and make us stronger.

Just as many people will remember what they were doing when Barack Obama was elected President of the USA, an overwhelming majority of Australians will remember what they were doing when the Prime Minister apologised to the stolen generations.

I think many people were taken aback by how powerful and emotional the Apology was, given that, for many years this was something that many Australians had been led to believe was something to fear.

It provided a glimpse – if just for one day – of what our society can be at its very best and how *good it feels*.

The Apology is also emblematic of what governments should generally be striving to achieve – namely, that their efforts should be based in a steely determination to uplift and support communities.

The Prime Minister has made very clear what is critical in achieving this – a new partnership and a new relationship. As he stated in the Apology speech:

symbolism is important but ... It is not sentiment that makes history; it is our actions that make history. Today's apology... is also aimed at building a bridge between Indigenous and non-Indigenous Australians—a bridge based on a real respect...<sup>3</sup>

Our challenge for the future is to cross that bridge and, in so doing, to embrace a new partnership between Indigenous and non-Indigenous Australians.

I have taken the Apology in the spirit that I believe it was intended – as the 'line in the sand' that marks the beginning of a new relationship and a new era of respect.

## 2. Milestone achievements

In the course of the past year I delivered six speeches in a series I called *Essentials for Social Justice*. Each speech discussed a particular challenge that we face as a nation if we are to realise true equality and respect for our Aboriginal and Torres Strait Islander brothers and sisters. The speeches identify shared ambitions where *every* Australian, both in government and in the community, has a role to play:

- With governments providing leadership, being accountable for their actions, embracing genuine partnership with Indigenous peoples and not being the barrier to our advancement – as they so often are.
- With Indigenous peoples embracing the prospect of a better life for our children and families, recognising that we need to be at the centre of creating such change and accepting the primary responsibility for the wellbeing of our communities.

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2 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 172 (The Hon Kevin Rudd MP, Prime Minister).

3 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 171 (The Hon Kevin Rudd MP, Prime Minister).

- And with the broader Australian community offering their support and treating us with dignity and respect, with the firm *expectation* that we will have the same opportunity to thrive and prosper as *all other* Australians do, and where our cultures are celebrated as among the great strengths of our diverse nation rather than being feared.

The first speech in this series, entitled *Sorry* and delivered in December 2007 outlined an agenda for addressing the needs of the stolen generations and the delivery of a national apology.

The second speech, entitled *Reform*, outlined an agenda for changing the way governments do business and are accountable for their performance.

The third speech, entitled *Protecting Indigenous children*, identified a range of lessons that we can all learn from Indigenous communities that are facing up to the violence in their communities. I also identified a way forward on the Northern Territory Intervention to ensure that it is non-discriminatory and ultimately capable of creating sustainable outcomes for our communities.

*Close the Gap*, the fourth speech, reflected on what is needed to achieve health equality for Indigenous Australians within a generation, and to create equal life chances for Indigenous children. There were some good advances on this deceptively difficult challenge over the past year, but there is still much to do.

The fifth speech, entitled *Caring for Culture, Caring for Country*, discussed the role of our traditional lands and culture in achieving economic development for our communities as well as in contributing to the challenges of climate change and other environmental issues.

The speeches identified major challenges for this nation in developing options for mitigating climate change without further displacing the rights of Indigenous peoples. For example, the ongoing lack of engagement with the Indigenous nations of the Murray-Darling and the lack of respect for the cultural importance of this area is extremely disturbing. It amounts to a contemporary form of dispossession of Indigenous peoples from their lands and waters.

The final speech, simply entitled *The future*, reflected on the achievements in the first twelve months of the new government performance in addressing these essentials for social justice. And in doing so, I also identified the challenges that exist for the future:

- first, to engender a sense of hope and ambition that things can change for the better; and
- second, to identify what some of the critical elements of this change might involve or look like.

The other milestone event that comes to mind as I reflect is the signing of *Statement of Intent to Close the Gap on Indigenous Health Equality* ('Statement of Intent').

Building on the recommendations of the *Social Justice Report 2005*, the National Indigenous Health Equality Summit in Canberra (18 – 20 March 2008) brought to culmination the two years of work of the Close the Gap Campaign on Indigenous Health Equality, since 2005. The Statement of Intent commits government to work in partnership, to:

Developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030.<sup>4</sup>

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4 *Close the Gap Statement of Intent* (signed at the Indigenous Health Equality Summit, Canberra, 20 March 2008). At [www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 28 January 2009).

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And the government has committed to do so with the full participation of Aboriginal and Torres Strait Islander peoples; by respecting and promoting the rights of indigenous peoples, and by monitoring efforts, in accordance with benchmarks and targets.

We have now made a substantial breakthrough on this most pressing human tragedy. That breakthrough is to convince policy makers, politicians and the general public that the goal of health equality for all Australians within a generation is realistic and achievable if we act together in partnership, and in a targeted and determined manner.

These commitments provide the basis for the cultural shift necessary to face up to the challenges that exist for Indigenous peoples in this country. While the commitments were made in relation to Indigenous health equality, they also form a template for the type of approach that is needed across all areas of poverty and disadvantage experienced by Indigenous peoples.

The government has recognised this, and has made equally important commitments in the areas of education, employment and early childhood development.

The Statement of Intent is one of the most significant compacts between Australian governments and civil society in Australian history. It should be seen as a foundation document for a national effort to achieve Indigenous health equality by 2030, setting out key principles that should underpin national efforts to that end. It was another hallmark and indication of the ambitious agenda government and Indigenous peoples can set and achieve together.

### 3. Follow-up action on *Social Justice Report 2007*

In my *Social Justice Report 2007* I committed to report on 'the actions taken by the government to address the concerns identified in this report relating to non-compliance with Australia's human rights obligations and the *Racial Discrimination Act 1975* (Cth) (*'Race Discrimination Act'* 'RDA'). In particular, the Social Justice Commissioner will identify the response of the Australian Government to the 14 recommendations contained in this report'.<sup>5</sup>

The first two of these recommendations related to family violence and child abuse in Indigenous communities. The remaining 12 recommendations came out of my human rights analysis of the Northern Territory Emergency Response ('NTER'/'NT Intervention').

Disappointingly, the Government has not implemented the majority of the recommendations contained in my *Social Justice Report 2007*. In particular, I note that there continues to be in place legislation and measures that are racially discriminatory, that are not compliant with the *Race Discrimination Act* and raise significant human rights concerns.

In spite of this, I am pleased to report that the following few elements of the 14 recommendations have been implemented since my last report:

- With respect to Recommendations 1 and 2 on addressing family violence and child abuse in Indigenous communities, I welcomed the government's initiative in establishing the National Council to Reduce Violence against Women and their Children (the 'Council') on 26 May 2008. The Council was given the responsibility to oversee the Government's commitment to establish and implement the *National Plan to Reduce Violence against Women and their Children* (the 'Plan'). The Commission has made

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5 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 309.

submissions and held discussions with the Council on addressing family violence in Indigenous communities. The Council was expected to release its report in December 2008.

- Recommendation 7 was in response to my concerns with changes to the permit system under the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (effective 17 February 2008) and the extent to which they could be classified as a ‘special measure’ under the RDA. Although not fully implementing this recommendation, I note that the Minister has not exercised her discretion to remove permits.

The Minister for Families, Housing, Community Services and Indigenous Affairs also introduced a Bill in Parliament in February 2008<sup>6</sup> to reinstate aspects of the permit systems that were removed under the NT Intervention. The Bill proposes to remove the provisions enacted by the former Government, but retain the capacity of the Commonwealth Minister to permit selected individuals or classes of individuals to enter any specified Indigenous land. However, the Senate did not pass the Bill and voted in support of retaining the existing measures that are not compliant with the RDA.<sup>7</sup>

- Recommendation 11(a) to reinstate CDEP in the 25 prescribed communities and five town camp regions in the Northern Territory was implemented on 30 June 2008. The government has also distributed a discussion paper on ‘The Future of CDEP and Indigenous Employment Programs’ in May 2008, with a view to reviewing CDEP and preparing a report to be completed in 2009.
- Recommendation 11(b–d) pertained to introducing voluntary income management measures; reviewing and amending the income management scheme to ensure compliance with human rights standards; and developing and introducing voluntary income management and financial literacy programs for welfare recipients.

Since my last report, the Government has confirmed it will maintain the mandatory income management scheme under the NT Intervention, but that it will look to revise the scheme to ensure it will conform with the RDA and will not involve suspension of the Act.<sup>8</sup> In addition it has also introduced the following new income management schemes under the NT Intervention legislation:<sup>9</sup>

6 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008.

7 In my *Social Justice Report 2007* I found that the RDA excludes from the ‘special measures’ exemption any provisions that authorise management of property without the consent of Aboriginal and Torres Strait Islander people or prevent them from terminating management by another of land owned by them. To be consistent with the RDA, the measures relating to the management of land must be undertaken with the consent of the landowners, and this was not obtained for the changes to the permit system. Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 263.

8 Commonwealth Government, Statement: ‘Australian Government Initial Response to the NTER Review’ (23 October 2008).

9 *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*

- The Family Responsibilities Commission (FRC) commenced in Queensland on 1 July 2008.<sup>10</sup> The FRC has the power to recommend Indigenous and non-Indigenous individuals who have lived in the designated areas of Hope Vale, Aurukun, Mossman Gorge, and Coen for three months, who are recipients of a welfare payment or are CDEP participants, and who aren't meeting parental and community responsibilities<sup>11</sup> for income management.

Although the majority of people subject to the FRC are Indigenous, the application of Part II of the *Race Discrimination Act* is suspended for the FRC, which includes the operative provisions prohibiting racial discrimination.

However, unlike the mandatory income management scheme in the Northern Territory, under the FRC, income management is a measure of last resort and only applies to identified individuals, rather than automatically applying to everyone within the designated areas.

- Trial income management scheme – Kununarra and Cannington, WA: Commenced in WA on 24 November 2008.<sup>12</sup> Under the scheme up to 70% of welfare payments and 100% of lump sum payments can be quarantined from parents whose children are considered at risk.

Like the Queensland scheme, the WA trial is a measure of last resort and only applies to identified individuals, rather than to everyone within the trial site.

However, it differs from the other schemes identified above in that at least one of the trial sites is not predominantly populated by Indigenous peoples and it is subject to the RDA.

Although the government has not implemented my recommendations for income management to date, aspects of the schemes that the Government has introduced have begun to be responsive to my recommendations. For example, both the Queensland and WA schemes are a preferable approach to differing degrees because they are applied on the basis of the individual circumstances of families, and so have the capacity to be more targeted to need. Further, making the WA scheme subject to the *Race Discrimination Act* provides for the scheme to be applied in a non-discriminatory way.

However, I have also noted that for such schemes to be effective, there also needs to be proper engagement with communities that ensures affected people are provided the assistance they need to ensure their children are fed, clothed and schooled. I have also noted that any form of income management needs to be accompanied by a suite of services to assist families – income management of itself is a blunt tool to meet the challenges facing many people.

The government has indicated that it will be drawing on the findings of each of the three income management models to implement broader

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10 The Family Responsibilities Commission was established by legislation (*Family Responsibilities Act 2008* (QLD)) that is authorised by the same legislative provisions as the income management regime of the Northern Territory Intervention.

11 For instance in situations where: a child has three unexplained absences from school; a person is subject to a child safety notification or report; or is convicted of an offence; or breaches a public housing tenancy agreement.

12 The WA Welfare trials were introduced under the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

welfare reforms, possibly within 12 months. It is hoped that the further welfare reforms will ensure they are consistent with human rights standards, as per my recommendations.

- The Review of the NT Intervention implemented my fourteenth recommendation to: independently monitor Intervention measures, 12 months following their commencement.

In its submission to the Review, the Commission noted the limited time and capacity provided for the Review. The Commission also noted the Review would be constrained by the lack of benchmarking and monitoring data collected prior to the Northern Territory Emergency Response Review Board's ('Review Board') formation in June 2008. At the commencement of the NT Intervention the Commission noted that there were insufficient baseline measures in place to allow a comparison of the circumstances of Indigenous peoples before and after the NT Intervention.<sup>13</sup> The lack of benchmarking and monitoring data and processes limits the capacity to assess the effectiveness of the NT Intervention.

The Commission, in light of the limited progress made by government in implementing the 14 recommendations of the *Social Justice Report 2007*, recommended the Review Board call for the full implementation of the ten point plan and associated recommendations made in the *Social Justice Report 2007*.

The Review Board's report, released in October 2008 found that the NT Intervention had made some positive changes in the Northern Territory, for instance in terms of increased police presence in communities, measures to reduce alcohol-related violence, improving quality and availability of housing, health and wellbeing of communities and education. However, the Review Board noted that the NT Intervention had in many respects not succeeded because it had failed to engage with the very people it was intended to help. The Review Board noted that local communities saw the significant government investment under the NT Intervention as 'an historic opportunity wasted because of its failure to galvanise the partnership potential of the Aboriginal community'.<sup>14</sup>

Despite the advantages and disadvantages of the NT Intervention, in light of the acute levels of deprivation and disadvantage continuing to exist in many communities, the Review Board found that the NT Intervention should be continued, but that there needed to be improvements made. This was particularly in terms of better coordination by government in delivery of services and increased engagement with affected communities on the design and delivery of services. The Review Board placed significant emphasis on the need for the government to reframe the NT Intervention so that it is undertaken in conjunction with Indigenous communities, rather than involuntarily imposed on them:

The most essential element in moving forward is for government to re-engage with the Aboriginal people of the Northern Territory.<sup>15</sup>

The three overarching recommendations made by the Review Board were:

- The Australian and Northern Territory Governments recognise as a matter of urgent national significance the continuing need to address the unacceptably

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13 Milroy, H., (Associate Professor, Centre for Aboriginal Medical and Dental Health University of Western Australia) personal email correspondence with the Aboriginal and Torres Strait Islander Social Justice Commissioner, 9 August 2007.

14 Northern Territory Emergency Review Board, *Northern Territory Emergency Response: Report of the NTER Review Board*, Commonwealth of Australia (2008), p 10.

15 Northern Territory Emergency Review Board, *Northern Territory Emergency Response: Report of the NTER Review Board*, Commonwealth of Australia (2008), p 11.

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high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory;

- In addressing these needs both governments acknowledge the requirement to reset their relationship with Aboriginal people based on genuine consultation, engagement and partnership; and
- Government actions affecting Aboriginal communities respect Australia's human rights obligations and conform to the *Racial Discrimination Act 1975*.<sup>16</sup>

In addition the Review Board made recommendations in relation to: welfare reform, employment, law and order, education, family support, health, housing, land reform, coordination, re-engagement, funding, governance, data and evaluation.

The recommendations of the Review Board were closely consistent with the recommendations made in my *Social Justice Report 2007*, particularly with regards to removing suspensions of the *Race Discrimination Act* and addressing the human rights concerns I had identified with the Intervention.

On 23 October 2008, the federal government issued an Initial Response to the Review Board's report,<sup>17</sup> outlining the government's intention to continue the current stabilisation phase of the NTER for the next twelve months before transitioning to a long-term, development phase. The government stated that it agreed with the Report's three overarching recommendations and will act on them in progressing towards the development phase of the Intervention.

The key elements of the stabilisation phase identified in the Minister's statement included:

- maintaining compulsory income management, the five-year leases, and alcohol and pornography controls;
- legislating in the first half of 2009 to ensure people subject to the NT income management regime have access to the full range of appeal mechanisms afforded to other Australians, including through the Social Security Appeals Tribunal and the Administrative Appeals Tribunal;
- asking the NT Valuer-General to determine a reasonable rent for all existing five-year leases and payment commencing automatically; and examining the scope to reduce the current boundaries of five-year leases; and
- negotiating with traditional owners for long term leases to continue. This is to ensure that beneficial activities already under way, in particular, the Australian Government's \$547 million investment in new housing, housing upgrades and reformed tenancy arrangements, can be progressed.

The elements of the transition period between the stabilisation phase and the development phase are:

- the ongoing development and implementation of our policies to close the gap on Indigenous disadvantage;
- an immediate, renewed emphasis on community engagement and development to build the foundations for more lasting change; and

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16 Northern Territory Emergency Review Board, *Northern Territory Emergency Response: Report of the NTER Review Board*, Commonwealth of Australia (2008), p 12.

17 Commonwealth Government, Statement: 'Australian Government Initial Response to the NTER Review' (23 October 2008).

- the Government designs and consults on a new compulsory income management policy which does not involve the suspension of the *Race Discrimination Act*. These consultations will acknowledge that not all welfare recipients are unable to manage their finances in the interests of dependent women and children.

The commencement of the development phase will be marked by the introduction of legislation to lift the suspension of the *Race Discrimination Act* in the Spring 2009 sittings of the Parliament.

However, beyond this initial commitment made in October 2008, as at the time of writing this report, the Government has issued no further detailed response addressing the majority of recommendations of the report. Irrespective of this absence of a considered response, the government has continued to implement the NT Intervention without adequately addressing the significant problems highlighted both in my *Social Justice Report 2007* and in the Review Board's report:

Addressing specific concerns in Aboriginal communities does not require the exclusion of fundamental human rights such as the *RDA*. This was also made clear in the Aboriginal and Torres Strait Islander Commissioner's Social Justice Report which identified a 10-point 'action plan' to modify the NTER to ensure compliance with human rights.

From the Board's perspective, it is critical to ensure that the fundamental issues concerning the exclusion of the *RDA*, the right to procedural fairness including the right to seek external merits review, the exclusion of anti-discrimination laws in the Northern Territory and the deeming of measures as 'special measures', are all matters that require immediate change. Changes to other measures, such as income management, the acquisition of land, the development of community development partnership agreements and community development plans also need to be made, but may require an intermediate period to transition from the present scheme to alternative arrangements as identified by the Board in its recommendations in chapter 3.

In the Board's view, there are no convincing arguments for excluding human rights principles and the *RDA*. Consistent with a key theme of the review the Board believes the re-engagement process has to be underpinned by acknowledgment of the informed consent principle and human rights provisions.

Recommendations on human rights: Government actions affecting Aboriginal communities respect Australia's human rights obligations and conform with the *Racial Discrimination Act 1975*.<sup>18</sup>

The recommendations of the NT Review Board provide government an opportunity to re-engage with Indigenous communities and give Indigenous communities both a role in the running of their communities and in determining their own futures. Hopefully it will be an opportunity that is taken.

#### 4. *Native Title Report 2008*

The election of the new federal government in 2007 brought a raft of policies aimed at improving the social and economic situation of Aboriginals and Torres Strait Islanders, many of which are inextricably linked to native title.

The National Apology highlighted the devastating impacts of dispossession and removal of Indigenous peoples from their traditional lands, resulting in the disruption of connection to their country and their culture. This continues to impact upon the ability or success of Aboriginal and Torres Strait Islander peoples claiming native title,

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18 Northern Territory Emergency Review Board, *Northern Territory Emergency Response: Report of the NTER Review Board*, Commonwealth of Australia (2008), p 47.

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with the cruel twist that the more an Aboriginal or Torres Strait Islander has been hurt by government policy, the less likely they are to have their native title recognised.

In this year's *Native Title Report*, in addition to examining the progress the government has made in achieving greater rights and equality for Indigenous peoples, through native title, the two thematic foci for this year's report are climate change and water. While both issues are of national significance, I focus on the specific implications and impacts on Indigenous peoples and their rights. I also examine the protection of Indigenous knowledge in policies and processes developed in response to these issues.

In examining the effect of climate change and water on Indigenous peoples in Australia, I make a number of recommendations aimed at heightening Indigenous participation and engagement in meeting these challenges. I have included two case studies which illuminate the importance of these issues, exploring the potential impacts of climate change on a number of human rights of Torres Strait Islanders and the Indigenous nations of the Murray-Darling Basin.

The report also considers three important native title cases before the courts in 2007–2008; Noongar, Rubibi and Griffiths, followed by a discussion of the Blue Mud Bay case which related to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). These cases consider how the *Native Title Act* and other legislation impacts on the human rights of Aboriginal and Torres Strait Islander peoples.

As I have endeavoured to do in previous reports, the *Native Title Report 2008* considers issues relevant to Aboriginal and Torres Strait Islander peoples now and for the future.

## 5. Contents of the *Social Justice Report 2008*

At a time now where we can believe change is possible, where there is a level of bipartisan support, as well as support across federal and state and territory governments, we have an unprecedented opportunity to turn these commitments into sustained action.

**Chapter two** examines the current gaps in protection for Indigenous peoples' human rights and identifies formal protections needed to protect Indigenous peoples' rights into the future.

Since 1788, as Indigenous peoples we have consistently asserted our rights. We have repeatedly and publicly called upon governments to formally recognise our human rights and to protect us from racial discrimination.<sup>19</sup>

Our legal system has enshrined very few of the rights contained in the two main international human rights treaties, on economic, social and cultural rights and civil and political rights. While this affects all Australians, the consequences of such a lack of protection impacts the most on those who are the most vulnerable and marginalised in our society – such as Indigenous peoples.

The end result is a legal system that offers minimal protection to human rights and a system of government that treats human rights as marginal to the day to day challenges that we face.

We need better protection of human rights in our legal system as well as mechanisms to ensure that the courts, the executive and the cabinet have human rights at the forefront of their thinking at all times.

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<sup>19</sup> For a thorough historical account of calls for Indigenous rights protection, see B Attwood and A Markus, *The Struggle for Aboriginal Rights* (1999).

Democratic accountability, parliamentary scrutiny and a strong separation of powers in Australia did not prevent Aboriginal peoples being disenfranchised and excluded from the national census for the best part of the 20<sup>th</sup> century.

The protections of the common law did not prevent the removal of Aboriginal and Torres Strait Islander children from their families and has since provided limited redress for the ill-treatment of children removed.

The clear deficiencies in our existing system of human rights protection leave Indigenous peoples either without protection or with protection that is vulnerable to being overridden by competing priorities.

The new Commonwealth government has announced a broad national consultation process to consider the adequacy of human rights protections in Australia. The Prime Minister has also raised the possibility of constitutional reform to recognise Indigenous peoples and has identified processes to improve Indigenous representation – two key issues that will impact on the adequacy of rights protection for Indigenous peoples.

It is therefore timely to consider an agenda to ensure adequate protection of Indigenous peoples rights into the future.

There are six main areas where reform is needed to ensure full protection for Indigenous peoples and to modernise our human rights system. These are as follows:

1. Commonwealth Government to formally declare its support for and implement the *Declaration on the Rights of Indigenous Peoples*;<sup>20</sup>
2. A national Human Rights Act to be enacted in Australia that includes protection of Indigenous rights;
3. Constitutional reform to recognise Indigenous peoples in the preamble; remove discriminatory provisions from the Constitution and replace these with a guarantee of equal treatment and non-discrimination;
4. The establishment of a National Indigenous Representative Body and processes to ensure the full participation of Indigenous peoples in decision making that affects our interests;
5. The establishment of a framework for negotiations/ agreements with Indigenous peoples to address the unfinished business of reconciliation; and
6. A focus on human rights education and the building of a culture of human rights recognition and respect.

**Chapter three** reviews the provision of education services in remote Australia with specific focus on the availability and accessibility of education services for Indigenous preschool, primary and secondary school students. A major finding of the chapter is that there is no accurate information to assess whether remote Indigenous students have reasonable access to education in their region. There is no data which matches populations of school-aged students against preschool, primary and secondary school services across Australia.

In line with the Commonwealth Government's commitment to improve the life chances of Indigenous Australians through education, this chapter outlines specific measures to address the considerable challenges of providing quality school education in remote Australia.

I focus on developing partnerships between Indigenous stakeholders and school service deliverers in remote regions so that decisions can be made at the local level.

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20 *United Nations Declaration on the Rights of Indigenous Peoples* GA Resolution 61/295, UN Doc A/61/L.67 (2007) ('*Declaration*').

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A partnership between Indigenous people, governments and others must be driven by local priorities if it is to be successful in improving education in remote Australia. Partnerships must establish common understandings of the roles and responsibilities of all education stakeholders as well as clear direction about the objectives and anticipated outcomes of the education service.

This chapter also looks at the issue of remote teachers and leaders and the extent to which this workforce is supported and resourced. It discusses the provision of early childhood education which, as we know is an essential building block in the education process.

Throughout the chapter I provide examples of initiatives which demonstrate good practice and I conclude with recommendations for government action to improve the systems that provide and deliver education services to remote Indigenous students.

The case studies in this chapter show that remarkable things can happen. There is an imperative for governments and other providers to act now on Indigenous education. There is an economic cost and a human cost to the poor educational performance of remote Indigenous students. We Indigenous people are best placed to be the architects of our own policies and services, but we can't do this alone and we can't do this without the infrastructure and the services which will give our children access to the best possible education.

**Chapter four** reflects on the undeniable and urgent need for healing in Indigenous communities. You only need to listen to the stories of members of the Stolen Generations; the stories of Indigenous women escaping family violence; the stories of Indigenous peoples in custody who know about the thin line between victim and perpetrator; and the Indigenous children that carry all of these stories around, to know that we need healing urgently.

This need is not new. There have been widespread calls for healing and healing programs to meet the recommendations for the *Bringing them home* report. However, we are also seeing renewed calls for healing to address broader issues like family violence, suicide and alcohol and other drug abuse.

I have argued in this chapter that I do think we have a rare confluence of events at the moment to address this need. The National Apology has stirred real compassion and understanding amongst Australians. Many are looking for ways that they can try and 'make good' for the past, but in a way that is also about achieving a better future. Healing holds that promise and I think it is something people will get behind if we put it firmly on the national agenda.

Healing has been taking place in many different Indigenous communities and contexts. But I have also found that many of the good examples of healing are *ad hoc* and poorly funded, when what is needed is consistent, long term support to heal the wounds of the Stolen Generations, their families and communities.

It is timely to bring healing to the fore of the national agenda on Indigenous affairs. In this chapter I aim to assist the context for a national discussion on Indigenous healing by articulating some of the common understandings of healing and healing programs. I provide examples of healing from around Australia and examine what we can learn from the decade of healing work in Canada. This year I carried out some consultations with Indigenous experts and representative organisations on suggestions for a national Indigenous healing body. I report on the feedback, highlighting what can be done to support and advance an agenda for healing.

However, I urge that action not be at the expense of proper consultation. This is too important an issue to rush in and develop healing policy without real community engagement. Experience tells us that this could be a once in a life opportunity so let's

do it in a way that respects human rights and will ultimately lead to better policy and outcomes.

**Chapter five** looks at progress made in addressing Indigenous health inequality since 2005. In the *Social Justice Report 2005*, I called for a national effort to close the gap in health inequality within a generation. Since 2006, I have led a substantial national campaign to garner public support for this goal and to articulate what is required to achieve it.

*Close the Gap* has become part of the lexicon. It is widely used to describe the policy aspirations of Australian governments across a range of areas of socio-economic disadvantage. This signifies the breakthrough we have made in convincing policy makers, politicians and the general public that the goal of health equality for all Australians within a generation is realistic and achievable if we act together in partnership, and in a targeted and determined manner.

Already, we have seen substantial investments and the beginning of health system reforms to back them up. Some of the significant achievements include: the commitments by the Council of Australian Governments in 2007, the commitments to the *Close the Gap Indigenous Health Equality Summit Statement of Intent*; the development of accountability measures in the *Close the Gap National Indigenous Health Equality Targets*; and the formation of the National Indigenous Health Equality Council, among others. These achievements have elevated the urgency of dealing with the Indigenous health crisis to a national priority and one that shares bipartisan support.

However, there is still much to do, and in this chapter I outline the measures that now need to be undertaken to consolidate and build on the achievements to date. Overall, I am cautiously optimistic that Indigenous Australians born in the year 2030 will look forward to the same long and healthy lives as their non-Indigenous counterparts so long as we continue to build on the substantial gains made since 2006.

**Appendix 1** of this report contains a chronology of important events in Indigenous affairs from 1 July 2006 to 30 June 2007.

**Appendix 2** provides a statistical overview of the current circumstances of the Aboriginal and Torres Strait Islander populations in Australia across a range of indicators including: health; education; employment; housing; and contact with criminal justice and welfare systems. This updates the statistical overview provided in the *Social Justice Report 2003*. Where possible data is provided that identifies absolute change in the situation of Indigenous peoples over the past five and ten years; and relative change in relation to the non-Indigenous population over the past five to ten years.

**Appendices 3 and 4** of the report provide background information for chapter three on remote Indigenous education. Appendix 3 sets out the *National Aboriginal and Torres Strait Islander Education Policy* in full. Appendix 4 outlines definitions of ‘accessible’ and ‘available’ education.

## 6. Setting a new agenda

The exploration in this year’s report of Indigenous human rights protections, remote Indigenous education, Indigenous healing and Indigenous health equality provide the basis for identifying the important steps government needs to take over the following eighteen months, to set the new agenda for Indigenous affairs. These include:

- In partnership with Indigenous peoples, establish and put into place a credible national Indigenous representative mechanism that is respected by the government;

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- Creating a role for human rights as part of the architecture in building a new relationship with Indigenous peoples including:
  - formally declare support for and implement the *Declaration on the Rights of Indigenous Peoples*;<sup>21</sup>
  - enact a national Human Rights Act that includes protection of Indigenous rights;
  - amend the *Constitution* to recognise Indigenous peoples in the preamble; remove discriminatory provisions and provide a guarantee of equal treatment and non-discrimination;
  - establish a framework for negotiations/ agreements with Indigenous peoples to address the unfinished business of reconciliation; and
  - provide human rights education;
- Reinstating the application of the *Racial Discrimination Act 1975* (Cth) for the Northern Territory Emergency Response legislation;
- Developing a remote education strategy and accountability framework, embedded in the National Indigenous Reform Agreement and in the relevant National Partnership Agreements;
- Initiating an audit of populations and projected populations of remote pre-school and school-aged children by statistical sub-division to be measured against the relevant education infrastructure and services;
- Establishing, in consultation with the Commonwealth and state/ territory governments and Indigenous organisations and communities, an independent, Indigenous controlled national Indigenous healing body, responsible for developing and implementing a coordinated National Indigenous Healing Framework.
- Developing an appropriately funded, long-term national plan of action to achieve Indigenous health equality;
- Establishing adequate mechanisms to coordinate and monitor the multiple service delivery roles of governments that impact on Indigenous health, and to monitor progress towards the achievement of Indigenous health equality.

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21 *United Nations Declaration on the Rights of Indigenous Peoples* GA Resolution 61/295, UN Doc A/61/L.67 (2007) ('Declaration').

# Chapter 2

## An Aboriginal and Torres Strait Islander human rights protection framework for the 21st century

.....

All Australians are equally entitled to enjoy the rights, benefits and responsibilities of citizenship. In our society, every person should feel free from discrimination of any kind and have the right to share in the nation's land, resources and wealth. The entitlements and freedoms of all people are recognised in human rights instruments, many of which have been freely signed and ratified by Australia, and in some instances are now a part of Australian law.

However, it is an unavoidable reality of our past that Aboriginal and Torres Strait Islander peoples have not had the opportunity to fully enjoy their human rights. This is because of the process of colonisation, the dispersal, removal and dispossession of many Aboriginal and Torres Strait Islander peoples, and a history of discrimination.

The full exercise and enjoyment of the human rights of the Aboriginal and Torres Strait Islander peoples is an essential foundation for reconciliation.<sup>1</sup>

Council for Aboriginal Reconciliation – *Roadmap to Reconciliation* (2000)

## Part 1: Introduction

.....

Australia has much that it can be proud of. Over the past 220 years, our strong traditions of liberal democracy, an independent judiciary and a vibrant media sector have secured our ongoing political stability and our prosperity. For the majority of Australians, these strong traditions have also been sufficient to protect their basic rights and freedoms. But this is not true for all Australians.

A commitment to human rights in Australia means working towards justice for every citizen, and not simply for the popular majority. By this measure, I believe there is still much work to be done – particularly for Aboriginal and Torres Strait Islander peoples.

Indigenous peoples continue to live with the consequences of their human rights not being fully protected. Appendix 2 of this report shows how

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1 Council for Aboriginal Reconciliation, *Roadmap to Reconciliation* (2000). At [http://www.austlii.edu.au/au/orgs/car/recognising\\_rights/pg3.htm](http://www.austlii.edu.au/au/orgs/car/recognising_rights/pg3.htm) (viewed 31 January 2009).

Indigenous peoples continue to enjoy a substantially lower quality of life in relation to their health, education, housing, land, and have a higher engagement with the criminal justice system, child protection systems and welfare.

Clear deficiencies have also been identified in our existing system of human rights protection for more than a decade. No action has been taken to redress this, leaving Indigenous peoples either without protection or with protection that is vulnerable to being overridden by competing priorities.

The new Commonwealth government has announced a broad national consultation process to consider the adequacy of human rights protections in Australia. The Prime Minister has also raised the possibility of constitutional reform to recognise Indigenous peoples and has identified processes to improve Indigenous representation – two key issues that will impact on the adequacy of rights protection for Indigenous peoples.

It is therefore timely to consider an agenda to ensure adequate protection of Indigenous peoples rights into the future. There are six main areas where reform is needed to ensure full protection for Indigenous peoples and to modernise our human rights system. These are as follows:

1. Commonwealth Government to formally declare its support for and implement the *UN Declaration on the Rights of Indigenous Peoples*;<sup>2</sup>
2. A national Human Rights Act to be enacted in Australia that includes protection of Indigenous rights;
3. Constitutional reform to recognise Indigenous peoples in the preamble; remove discriminatory provisions from the Constitution and replace these with a guarantee of equal treatment and non-discrimination;
4. The establishment of a National Indigenous Representative Body and processes to ensure the full participation of Indigenous peoples in decision making that affects our interests;
5. The establishment of a framework for negotiations/ agreements with Indigenous peoples to address the unfinished business of reconciliation; and
6. A focus on human rights education and the building of a culture of human rights recognition and respect.

Such a reform agenda will take a number of years to realise. Collectively, however, these measures provide the necessary components of a foundation for Indigenous rights protection in the twenty-first century and beyond.

## 1. Unfinished business – the need for reform has been clearly identified

Since 1788, Indigenous peoples have consistently asserted our rights. We have repeatedly and publicly called upon governments to formally recognise our human rights and to protect us from racial discrimination.<sup>3</sup>

Some of the most powerful and well-known calls for Indigenous rights protections have been made at the community level and include:

- In 1938 the Aborigines Progressive Association made a 10-point statement to the Prime Minister requesting the establishment of a federal Department

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2 *United Nations Declaration on the Rights of Indigenous Peoples* GA Resolution 61/295, UN Doc A/61/L.67 (2007) ('Declaration').

3 For a thorough historical account of calls for Indigenous rights protection, see B Attwood and A Markus, *The Struggle for Aboriginal Rights* (1999).

of Aboriginal Affairs with the objective of 'rais[ing] all Aborigines throughout the Commonwealth to full Citizen status and civil equality with the whites in Australia';<sup>4</sup>

- In 1939 the Yorta Yorta peoples living at Cumeragunja station led a walk off to protest their living conditions, the leasing of their land without their consent, and the oppressive laws governing the reserve system;
- In 1963 the Yolgnu people presented the Yirrkala Bark Petition to the Commonwealth government to protest the failure to consult Indigenous peoples about mining developments on their lands;
- Between 1966 and 1975, Gurindji, Ngarinman, Bilinara, Walpiri and Mudbara peoples led the Wave Hill Walk Off to protest against the labour rights and conditions of Indigenous peoples, and demand the return of traditional lands;
- In 1988 the Barunga Statement requested that the Commonwealth Parliament pass legislation guaranteeing a national elected Aboriginal and Islander organisation to oversee Aboriginal and Islander affairs. The statement also requested that the Government negotiate a constitutional treaty recognising Indigenous peoples' prior ownership and continued occupation and sovereignty over Australia;<sup>5</sup>
- In July 2008 a paper-bark Declaration was presented to the Prime Minister at a community cabinet held in Yirrkala. Like the Barunga statement, the *Yolngu and Bininj Leaders' Statement of Intent* called upon the Prime Minister to initiate a process of constitutional reform to recognise and protect Aboriginal rights to culture, lands and waters, and self-determination.<sup>6</sup>

Proposals for rights recognition have also been advanced by Indigenous peoples and their organisations operating at the policy level:

- In 1979, the National Aboriginal Conference, which had been established by the Commonwealth Government two years earlier, requested that a Treaty of Commitment be executed between the Aboriginal Nation and the Australian Government, and developed an ongoing special committee to advance Indigenous views of what should be included in a 'Makarrata' agreement.
- In 1995, the Aboriginal and Torres Strait Islander Commission set out a comprehensive strategy entitled *Recognition, Rights and Reform* which set out some of the fundamental elements of rights recognition, including:
  - an increased commitment to supporting international instruments which reinforce Indigenous rights;
  - support for measures to define, recognise and extend Indigenous rights including new initiatives in areas such as communal title and assertion of coextensive rights;
  - promotion and advancement of the constitutional reform agenda;
  - Indigenous representation in Parliament;

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4 'Our Ten Points: Deputation to the Prime Minister' *Australian Abo Call*, No. 1, 1938. At <http://asset0.aiatsis.gov.au:1801/webclient/DeliveryManager?&pid=20373> (viewed 12 December 2008).

5 The full text of the Barunga Statement is available at: Australian Institute of Aboriginal and Torres Strait Islander Studies, Treaty, <http://www1.aiatsis.gov.au/exhibitions/treaty/barunga.htm> (viewed 26 November 2008).

6 The full text of the communiqué is available at: Reconciliation Australia, *Communiqué: Yolngu and Bininj Leaders' Statement of Intent*. At [http://www.reconciliation.org.au/downloads/755/APPENDIX\\_A.pdf](http://www.reconciliation.org.au/downloads/755/APPENDIX_A.pdf) (viewed 4 February 2009).

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- processes to start work on compensation issues; and
- support for initial work to develop a framework for a treaty and negotiation arrangements.<sup>7</sup>

A number of strategies for Indigenous rights reform and protection have also been recommended by an extensive number of inquiry and consultation processes. Table 1 below captures a number of the most significant of these recommendations.

<b>Year</b>	<b>Inquiry/Report</b>	<b>Select Recommendations</b>	<b>Outcome</b>
1988	Final Report of the Constitution Commission <sup>8</sup>	<p>That a comprehensive statement of constitutionally protected rights and freedoms be inserted in a new Chapter of the constitution, including the following section:</p> <ul style="list-style-type: none"> <li>▪ 124G. (1) Everyone has the right to freedom from discrimination on the ground of race, colour, ethnic origin, sex, marital status, or political, religious or ethical belief.</li> <li>▪ (2) Sub-section (1) is not infringed by measures taken to overcome disadvantages arising from race, colour, ethnic or national origin, sex, marital status, or political, religious or ethical belief.<sup>9</sup></li> </ul> <p>That section 25 of the <i>Constitution</i> should be removed.<sup>10</sup></p>	Not implemented
1991	Royal Commission into Aboriginal Deaths in Custody <sup>11</sup>	<p>That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.<sup>12</sup></p>	Implemented to the extent that the reconciliation process, headed by the Council for Aboriginal Reconciliation, was established in response.

7 Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform: A Report To Government On Native Title Social Justice Measures* (1995).

8 Australian Constitutional Reform, *Final Report of the Constitutional Commission: Summary 1988* (1988). At <http://www.ausconstitution.info/ConComm88/start.shtml> (viewed 26 November 2008).

9 Australian Constitutional Reform, *Final Report of the Constitutional Commission: Summary 1988* (1988) p 39. At <http://www.ausconstitution.info/ConComm88/start.shtml> (viewed 26 November 2008).

10 Australian Constitutional Reform, *Final Report of the Constitutional Commission: Summary 1988* (1988) p 15. At <http://www.ausconstitution.info/ConComm88/start.shtml> (viewed 26 November 2008).

11 Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991). See in particular, Volume 5, chs 36–38.

12 *Royal Commission into Aboriginal Deaths in Custody* (1991) recommendation 188.

Year	Inquiry/Report	Select Recommendations	Outcome
		That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged. <sup>13</sup>	
1997	<i>Bringing them home</i> report <sup>14</sup>	To address the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people the Council of Australian Governments: <ol style="list-style-type: none"> <li>1. in partnership with ATSIC, the Council for Aboriginal Reconciliation, the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and Indigenous community organisations dealing with Indigenous family and children's issues, develop and implement a social justice package for Indigenous families and children, and</li> <li>2. pursue the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody which address underlying issues of social disadvantage.<sup>15</sup></li> </ol>	Not implemented
2000	Council for Aboriginal Reconciliation <sup>16</sup>	The Commonwealth Parliament prepare legislation for a referendum which seeks to: <ul style="list-style-type: none"> <li>▪ recognise Aboriginal and Torres Strait Islander peoples as the first peoples of Australia in a new preamble to the <i>Constitution</i>; and</li> </ul>	Not implemented

13 Royal Commission into Aboriginal Deaths in Custody (1991) recommendation 339.

14 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the national Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).

15 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the national Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), recommendation 42.

16 Council for Aboriginal Reconciliation, *Roadmap to Reconciliation* (2000). At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/10/pg3.htm> (viewed 2 December 2008).

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Year	Inquiry/Report	Select Recommendations	Outcome
		<ul style="list-style-type: none"> <li>▪ remove section 25 of the <i>Constitution</i> and introduce a new section making it unlawful to adversely discriminate against any people on the grounds of race.<sup>17</sup></li> </ul>	
2008	2020 Summit <sup>18</sup>	<ul style="list-style-type: none"> <li>▪ Australia adopt a statutory charter of rights for all Australians, including Indigenous Australians.<sup>19</sup></li> <li>▪ The <i>Constitution</i> be amended to include a preamble that formally recognises Indigenous peoples' custodianship of land and waters.<sup>20</sup></li> <li>▪ That the <i>Constitution</i> be amended to remove any language that is racially discriminatory.<sup>21</sup></li> <li>▪ That a national process is conducted to consider a compact of reconciliation between Indigenous and non-Indigenous Australians.<sup>22</sup></li> </ul>	Government response forthcoming

These strategies set out comprehensively the elements of reform to guide land settlement processes and service delivery to Indigenous peoples, and to ensure the adequate recognition of Indigenous peoples' human rights.

Former Australian of the Year Professor Fiona Stanley argued in the 2008 Hawke Lecture that the 'missing link' in Indigenous policy-making has not been a lack of commitment by Indigenous peoples to achieving reform, or a lack of evidence-based proposals. The 'missing link' has been a lack of political will on the part of governments to fully implement the reforms that have been recommended by various inquiries or articulated by Indigenous peoples.<sup>23</sup>

17 Council for Aboriginal Reconciliation, *Reconciliation: Australia's Challenge* (2000) recommendation 3. At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/text10.htm> (viewed 2 December 2008). Constitutional reform was also identified as an essential component of the proposed 'Social Justice Package' to be developed in response to the *Mabo* decision in 1995: see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1995*, ch 4; Aboriginal and Torres Strait Islander Commission, *Recognition, rights and reform: a report to Government on native title social justice measures* (1995).

18 Australia 2020, *The future of Australian governance* (2008). At [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_9\\_governance.doc](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.doc) (viewed 26 November 2008).

19 Australia 2020, *The future of Australian governance* (2008) p 350. At [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_9\\_governance.doc](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.doc) (viewed 26 November 2008).

20 Australia 2020, *The future of Australian governance* (2008) p 307. At [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_9\\_governance.doc](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.doc) (viewed 26 November 2008).

21 Australia 2020, *The future of Australian governance* (2008) p 350. At [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_9\\_governance.doc](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.doc) (viewed 26 November 2008).

22 Australia 2020, *The future of Australian governance* (2008) p 350. At [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_9\\_governance.doc](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.doc) (viewed 26 November 2008).

23 F Stanley, The Greatest Injustice: why we have failed to improve the health of Aboriginal people (Speech delivered at the Adelaide Town Hall, 6 November 2008). At [http://www.unisa.edu.au/hawkecentre/ahl/2008AnnualHawkeLecture\\_FionaStanley.pdf](http://www.unisa.edu.au/hawkecentre/ahl/2008AnnualHawkeLecture_FionaStanley.pdf) (viewed 20 January 2009).

The past decade has left many Indigenous peoples disenchanted about the possibility of progress. Yet the passage of time has not removed the fundamental need for improved systems of protection for human rights for Indigenous peoples.

## 1.1 Inadequate human rights protections are currently in place

Many people are surprised when they learn that Australia has endorsed and supported human rights standards for over forty years in the international arena and yet we have failed to give practical meaning and protection to many of them in our domestic legal system.

This is not simply a failure that sits at the international level. It is a failure to deliver on commitments to the Australian public about the basic standards of treatment that they can expect at all times.

We have parked most human rights at the door leaving Australian citizens in the unenviable position that in relation to the majority of rights, we don't have any formal mechanisms for considering how laws and policies impact on people's rights or for providing redress where rights are abused.

As an example, we have very limited enshrinement in our legal system of the rights contained in the two main international human rights treaties, on economic, social and cultural rights and civil and political rights.

While this affects all Australians, the consequences of such a lack of protection impacts the most on those who are the most vulnerable and marginalised in our society – such as Indigenous peoples.

The end result is a legal system that offers minimal protection to human rights and a system of government that treats human rights as marginal to the day to day challenges that we face.

We need better protection of human rights in our legal system as well as mechanisms to ensure that the courts, the executive and the Cabinet have human rights at the forefront of their thinking at all times.

Democratic accountability, parliamentary scrutiny and a strong separation of powers in Australia did not prevent Aboriginal peoples being disenfranchised and excluded from the national census for the best part of the 20<sup>th</sup> century.

The protections of the common law did not prevent the removal of Aboriginal and Torres Strait Islander children from their families and has since provided limited redress for the ill treatment of children removed.

As recently as 1998, the Commonwealth Solicitor-General argued in the High Court that our *Constitution* could feasibly be used to introduce 'Nuremberg'/Nazi style laws that discriminate against Indigenous peoples or other racial groups.<sup>24</sup>

Indigenous human rights violations are also not confined to historical examples. Australia's primary federal instrument for the prevention of racial discrimination, the *Racial Discrimination Act 1975* (Cth) ('RDA'), is currently suspended with regard to the measures enacted under the Northern Territory Intervention legislation and in relation to welfare quarantining trials in Queensland for Indigenous people only.<sup>25</sup>

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24 Transcript of proceedings, *Kartinyeri v Commonwealth* (High Court of Australia, Kirby J and Griffith QC, 5 February 1998).

25 For further discussion of these measures, see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007) ch 3.

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The lack of formal protections for human rights in Australia also means that Australia is not fulfilling its legal obligations under international human rights law. This has been noted by a number of United Nations human rights committees. In particular:

- The UN Committee on the Elimination of Racial Discrimination has expressed concern ‘over the absence from Australian law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories’;<sup>26</sup>
- The United Nations Committee on the Elimination of Discrimination Against Women has questioned the absence of any ‘entrenched guarantee prohibiting discrimination against women and providing for the principle of equality between women and men’;<sup>27</sup>
- The UN Committee on the Rights of the Child has noted its concerns that the Convention ‘cannot be used by the judiciary to override inconsistent provisions of domestic law’;<sup>28</sup> and
- The UN Human Rights Committee<sup>29</sup> and the UN Committee Against Torture<sup>30</sup> have both expressed concerns about the absence of entrenched protections of human rights, such as constitutional or legislative protection of human rights at the national level, and the absence of remedies for breaches of a range of human rights.

The acceptance of international human rights obligations is not merely a rhetorical action. It places legal obligations on government to put in place formal measures and resources to ensure the protection and enjoyment of rights within Australia. This includes incorporating the human rights standards into domestic law (such as through constitutional and legal recognition) and allowing for people to seek an enforcement of these rights before national courts and tribunals.<sup>31</sup> The Human Rights Committee has noted that these legal obligations also require governments to ‘refrain from violation of... rights’ and to ‘adopt legislative, judicial, administrative, educative and other appropriate measures’ to secure recognition and protection of rights.<sup>32</sup>

### 1.2 Human rights protections – overcoming Indigenous disadvantage

A deceptively complex issue that we face in adequately protecting Indigenous peoples’ human rights is to recognise that eradicating poverty and overcoming Indigenous disadvantage is one of the most profound human rights challenges that we face in Australia. We must redefine how we conceive of poverty so it is squarely addressed as a human rights issue.

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26 Committee on the Elimination of Racial Discrimination, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/304/Add.101 (2000) par 6.

27 Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006) pars 12–13.

28 Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005) par 9.

29 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc A/55/40 (2000).

30 Committee against Torture, *Concluding observations of the Committee against Torture: Australia*, UN Doc CAT/C/AUS/CO/3 (2008), par 9.

31 Committee on Economic Social and Cultural Rights, *General comment No. 9 – The domestic application of the Covenant*, UN Doc HRI/GEN/1/Rev.6 (1998).

32 Human Rights Committee, General Comment No. 31 – Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) pars 6 and 7.

For too long now, we have heard it argued that a focus on Aboriginal and Torres Strait Islander peoples' rights takes away from a focus on addressing disadvantage.

This approach is in my view seriously flawed for a number of reasons. It represents a false dichotomy – as if poorer standards of health, lack of access to housing, lower attainment in education and higher unemployment are not human rights issues or somehow they don't relate to the cultural circumstances of Indigenous peoples.

Separating disadvantage from human rights also makes it too easy to disguise any causal relationship between the actions of government and any outcomes therefore limiting the accountability and responsibilities of government.

In contrast, human rights give Aboriginal and Torres Strait Islander peoples a means for expressing their legitimate claims for equal access to goods and services, most importantly equal protections of the law – and a standard that government is required to measure up to.

The focus on 'practical measures' was exemplified by the emphasis the previous Commonwealth government placed on the 'record levels of expenditure' annually on Indigenous issues.

As I have previously asked, since when did the size of the input become more important than the intended outcomes? The Howard government never explained what the point of the record expenditure argument was – or what achievements were made.

Bland commitments to practical reconciliation have hidden the human tragedy of families divided by unacceptably high rates of imprisonment, and of too many children dying in circumstances that do not exist for the rest of the Australian community.

The fact is that there has been no simple way of being able to decide whether the progress made through 'record expenditure' has been 'good enough'. So the 'practical' approach to these issues has lacked any accountability whatsoever.

It has also dampened any expectation from among the broader community that things should improve. So we have accepted as inevitable horror statistics of premature death, under-achievement and destroyed lives.

I am sure history will show that this past decade was one of significant under-achievement in addressing Indigenous disadvantage – and quite inexplicably, under-achievement at a time of unrivalled prosperity for our nation.

If we look back over the past five years in particular, since the demise of ATSIC, we can also see that a 'practical' approach to issues has allowed governments to devise a whole series of policies and programs without engaging with Indigenous peoples in any serious manner. I have previously described this as the 'fundamental flaw' of the Commonwealth government's efforts over the past five years. That is, government policy that is applied to Indigenous peoples as passive recipients.

Our challenge now is to redefine and understand these issues as human rights issues.

We face a major challenge in 'skilling up' government and the bureaucracy so that they are capable of utilising human rights as a tool for best practice policy development and as an accountability mechanism.

We have started to see some change with the Close the Gap process on Indigenous health equality. The new Australian government and all Australian Governments, through the Council of Australian Governments (or COAG), have agreed to a series of targets to be achieved over the next five to ten years to start the process to close the gap in health status and ultimately in life expectancy, as well as across a range of other measures.

In March this year, the Prime Minister, the Leader of the Opposition, Ministers for Health and Indigenous Affairs, every major Indigenous and non-Indigenous peak

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health body and others signed a *Statement of Intent to Close the Gap on Indigenous Health Equality* which sets out how this commitment would be met. It commits all of these organisations and government, among other things, to:

- develop a long-term plan of action, that is targeted to need, is evidence-based and is capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030;
- ensure the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs;
- work collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples;
- respect and promote the rights of Aboriginal and Torres Strait Islander peoples; and
- measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.<sup>33</sup>

These commitments were made in relation to Indigenous health issues but they form a template for the type of approach that is needed across all areas of poverty, marginalisation and disadvantage experienced by Indigenous peoples.

They provide the basis for the cultural shift necessary in how we conceptualise human rights in this country. Issues of entrenched and ongoing poverty and marginalisation of Indigenous peoples are human rights challenges. We need to lift our expectations of what needs to be done and of what constitutes sufficient progress to address these issues in the shortest possible timeframe so that we can realise a vision of an equal society.

This will be deceptively hard to achieve and it will take a generation. But it is a vital part of the human rights challenge for all Australians.

For government, this is important because a human rights based approach to Indigenous policy informs the most sustainable means of improving socio-economic outcomes. As both international and Australian research has documented extensively, improvements to the general wellbeing of Indigenous peoples are most effectively achieved in a framework that recognises Indigenous rights and culture, and supports Indigenous governance mechanisms.<sup>34</sup>

In contrast, a failure to recognise and respect Indigenous rights ultimately undercuts the basis on which meaningful partnerships between Indigenous peoples and governments can be sustained. It is for these reasons that the international program of action for the Second Decade of the World's Indigenous Peoples sets out a human rights framework for the full and effective participation of Indigenous peoples within the states in which they live.

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33 *Close the Gap Statement of Intent* (signed at the Indigenous Health Equality Summit, Canberra, 20 March 2008). At [www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 28 January 2009).

34 See, for example, J Hunt and D Smith, *Further Key Insights from the Indigenous Community Governance Research Project 2006*, Centre for Aboriginal Economic and Policy Research (2007) p 5. At [https://www.anu.edu.au/caepr/Projects/Key\\_Insights\\_ICGP\\_2006.pdf](https://www.anu.edu.au/caepr/Projects/Key_Insights_ICGP_2006.pdf) (viewed 20 January 2009); S Cornell, C Curtis and M Jorgensen, *The Concept of Governance and its Implications for First Nations*, Joint Occasional Papers on Native Affairs, No 2004–02 (2004). At [http://www.jopna.net/pubs/jopna\\_2004-02\\_Governance.pdf](http://www.jopna.net/pubs/jopna_2004-02_Governance.pdf) (viewed 6 August 2008); M Chandler and Travis Proulx, 'Changing Selves in Changing Worlds: Youth Suicide on the Fault-Lines of Colliding Cultures' (2006) 10 *Archives of Suicide Research* 125.

**Text Box 1: Objectives of the Second Decade of the World's Indigenous Peoples<sup>35</sup>**

- Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, programmes and projects;
- Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent;
- Redefining development policies that depart from a vision of equity and that are culturally inappropriate, including respect for the cultural and linguistic diversity of indigenous peoples;
- Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth;
- Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

### 1.3 An Aboriginal and Torres Strait Islander human rights agenda for the 21st century

For Indigenous peoples, human rights provide us with a means for expressing our legitimate claims to equal goods, services, and most importantly, the protections of the law. Strong protections for human rights also entrench standards that governments are required to measure up to over the long term.

In the *Social Justice Report 2006*, I identified that there was a 'protection gap' between Australia's nominal commitment to human rights at the international level, and the lack of mechanisms for the implementation and protection of those rights in the domestic sphere.<sup>36</sup> I recommended that the government allocate specific funding for the conduct of activities for the Second Decade in order to bridge that gap.<sup>37</sup>

Regrettably, the government's efforts to date in meeting that recommendation have been piecemeal. At both the federal and state/ territory levels, the past year has seen new policies and programs continue to be developed at a rapid pace – in relation to areas as diverse as Community Development Employment Projects (CDEP), welfare programs, education, Indigenous corporations, native title, water rights, environmental protection and climate change – all without the significant engagement and participation of Indigenous peoples, and without express regard to domestic and international human rights standards.

As I documented in the *Social Justice Report 2007*, the government's enactment of the Northern Territory Intervention measures was perhaps the starkest example in

35 *Program of Action for the Second Decade of the World's Indigenous Peoples GA Resolution 59/174 (2005)*

36 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2006) ch 4.

37 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2006) recommendation 6.

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recent years of the specific human rights 'protection gap' to which Aboriginal and Torres Strait Islander peoples are exposed.<sup>38</sup> Although the Intervention was not the first example of the Australian Government failing to comply with international human rights standards, it was a prescient reminder that the doctrines of representative and responsible government in Australia are at their weakest when relied upon to provide adequate safeguards for Indigenous rights protection in Australia.

The calls for reform by Indigenous peoples, the continuing experiences of violations of Indigenous rights in Australia and inequality in wellbeing of Indigenous and non-Indigenous peoples has persuaded me that a more comprehensive package of formal measures must be undertaken in Australia to close the Indigenous rights 'protection gap'.

In this chapter, I will set out the 'action agenda' needed to achieve this level of protection of rights. It involves six main areas for action:

1. Commonwealth Government to formally declare its support for and implement the *UN Declaration on the Rights of Indigenous Peoples*;
2. A national Human Rights Act to be enacted in Australia that includes protection of Indigenous rights;
3. Constitutional reform to recognise Indigenous peoples in the preamble; remove discriminatory provisions from the Constitution and replace these with a guarantee of equal treatment and non-discrimination;
4. The establishment of a National Indigenous Representative Body and processes to ensure the full participation of Indigenous peoples in decision making that affects our interests;
5. The establishment of a framework for negotiations/ agreements with Indigenous peoples to address the unfinished business of reconciliation; and
6. A focus on human rights education and the building of a culture of human rights recognition and respect.

It is my belief that each of the processes that I will describe are mutually re-enforcing, and that all of them must be undertaken to achieve a comprehensive rights protection framework for Australian Indigenous peoples.

The current Commonwealth government has stated that it is committed to improving domestic human rights protection, and a number of processes that I see as necessary are already underway.

While such developments are welcome, an ongoing challenge for governments, Indigenous communities and civil society will be to ensure that Indigenous voices are well represented in processes designed to improve human rights protection for the broader Australian community. A failure to do so could mean yet another missed opportunity to improve formal human rights protection mechanisms in a sector of Australian society where they are needed the most.

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38 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007) ch 3.

## Part 2: The United Nations Declaration on the Rights of Indigenous Peoples: a framework for Australian Indigenous rights protection

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Since the formation of the League of Nations, Indigenous peoples have looked to the international arena as a place to seek protection of their rights.<sup>39</sup> While the response of early international bodies to Indigenous peoples' concerns was often dismissive, Indigenous peoples have effectively continued to fight for their rights at the international level. This engagement has over time also influenced the development of Indigenous law and policy at the domestic level.

The past two decades have seen a number of significant developments made in Indigenous rights protection at the international level:

- Between 1982 and 2006 the Working Group on Indigenous Populations has reported upon the progress of the United Nations and its partners in advancing the fundamental rights and freedoms of indigenous peoples to the Sub-Commission on the Promotion and Protection of Human Rights – a subsidiary organ of the Commission on Human Rights.
- Between 1995 and 2004, recommendations made as a component of the First International Decade of the World's Indigenous Peoples saw the establishment of the United Nations Permanent Forum on Indigenous Issues.
- In 2001, a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was appointed to report on the human rights situation of indigenous peoples.
- The United Nations Expert Mechanism on the Rights of Indigenous Peoples – an expert advisory body to the Human Rights Council – conducted its first session in Geneva in October 2008.

But of all of the developments, perhaps the most significant milestone for indigenous rights at the international level came with the passage of the *UN Declaration on the Rights of Indigenous Peoples* ('Declaration') through the UN General Assembly in September 2007.

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39 F A Ruffin, '10 Stories The World Should Hear More About Indigenous Peoples: Living in Voluntary Isolation' (2004) 41(2) *UN Chronicle*. At <http://www.un.org/Pubs/chronicle/2004/issue2/0204p18.asp> (viewed 20 January 2009).

**Text Box 2: The passage of the *Declaration* through the United Nations system**

The *Declaration* has been one of the most highly negotiated and contentious instruments to make its way through the United Nations system. Taking as its starting point the Martínez Cobo Report on the Problem of Discrimination Against Indigenous Populations<sup>40</sup> the *Declaration* was progressively developed as a comprehensive statement of indigenous peoples' human rights over a period of approximately 20 years.

In perhaps the first example of an international instrument being drafted by the rights holders themselves, a variety of indigenous advocates worked alongside governments in the Working Group on Indigenous Populations, and in the open-ended inter-sessional Working Group on the Draft *Declaration* to progress various drafts of the *Declaration*. After being adopted by the United Nations Human Rights Council in 2006,<sup>41</sup> the *Declaration* was presented as a Resolution to the United Nations General Assembly.

On 13 September 2007, the *Declaration* was passed with overwhelming state support: with 143 countries voting in favour; 11 abstaining; and four countries voting against (Australia, Canada, New Zealand and the United States of America). Importantly, even while the states which voted against the adoption of the *Declaration* cited concerns with the wording of particular articles, they also expressed a general commitment to the core principles of the *Declaration*.<sup>42</sup>

In the *Social Justice Report 2006* I stated that the *Declaration* (then in its draft form) must be regarded as the centrepiece of Indigenous rights protection at the international level.<sup>43</sup>

**Text Box 3: The content of the *Declaration***

The *UN Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations General Assembly on 13 September 2007.<sup>44</sup> The *Declaration* has 46 substantive articles and 24 preambular paragraphs. The *Declaration* is divided into the following broad thematic areas:

- *Over-arching principles* (Articles 1–6): The rights of indigenous peoples to the full enjoyment of all human rights, non-discrimination, self-determination and autonomy, maintenance of indigenous institutions, and the right to a nationality.

40 Commission on Human Rights, *Study on the Problem of Discrimination Against Indigenous Populations*, UN Doc E/CN.4/Sub.2/476 (1981).

41 Human Rights Council, *Working group of the Commission on Human Rights to elaborate a draft Declaration in accordance with paragraph 5 of the General Assembly resolution 49/214 of 23 December 1994*, UN Doc A/HRC/RES/1/2 (2006).

42 Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, UN Doc A/HRC/9/9 (2008) p 12.

43 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2006) ch 4.

44 The full text of the *Declaration* on the Rights of Indigenous Peoples is available at: <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 4 February 2009).

- *Life, integrity and security* (Articles 7–10): Freedom from genocide, forced assimilation or destruction of culture, forced relocation from land, right to integrity and security of the person, and right to belong to an indigenous community or nation.
- *Cultural, spiritual and linguistic identity* (Articles 11–13): Rights to practice and revitalize culture and the transmission of histories, languages etc; and the protection of traditions, sites, ceremonial objects and repatriation of remains.
- *Education, information and labour rights* (Articles 14–17): Right to education, including to run their own educational institutions and teach in their language; cultures to be reflected in education and public information; access to media (both mainstream and indigenous specific); and rights to protection of labour law and from economic exploitation.
- *Participatory, development and other economic and social rights* (Articles 18–24): Rights to participation in decision-making, through representative bodies; rights to their own institutions to secure subsistence and development; special measures to be adopted to address indigenous disadvantage and ensure non-discriminatory enjoyment of rights; guarantees against violence and discrimination for women and children; right to development; and access to traditional health practices and medicines.
- *Land, territories and resources rights* (Articles 25–32): rights to maintain traditional connections to land and territories; for ownership of such lands and protection of lands by State; establishment of systems to recognize indigenous lands; rights to redress and compensation for lands that have been taken; conservation and protection of the environment; measures relating to storage of hazardous waste and military activities on indigenous lands; protection of traditional knowledge, cultural heritage and expressions and intellectual property; and processes for development on indigenous land.
- *Indigenous institutions* (Article 33–37): Rights to determine membership and to maintain institutions (including judicial systems), to determine responsibilities of individuals to their communities, to maintain relations across international borders, and right to the recognition of treaties, agreements and other constructive arrangements with States.
- *Implementation of the Declaration* (Articles 38–42): States and UN agencies to implement the provisions of the *Declaration*, including through technical and financial assistance; access to financial and technical assistance for indigenous peoples to implement the *Declaration*; and conflict resolution processes to be established that are just and fair.
- *General provisions of the Declaration* (Articles 43–46): The provisions of the *Declaration* are recognized as minimum standards and apply equally to indigenous men and women; the standards recognized in the *Declaration* may not be used to limit or diminish indigenous rights, and must be exercised in conformity with the *UN Charter* and universal human rights standards; the provisions in the *Declaration* to be interpreted in accordance with principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.<sup>45</sup>

45 For a detailed description of the *Declaration's* structure (prior to the changes accepted by the Human Rights Council) see: S Pritchard, *An analysis of the United Nations Draft Declaration on the Rights of Indigenous Peoples*, ATSI (1999); and C Charters 'The rights of Indigenous peoples' (2006) *New Zealand Law Journal*, October 2006, pp 335–337.

The *Declaration* does not create any new legal standards under international law. Instead, it enunciates and explains the particular entitlement of indigenous peoples to existing universal human rights standards under instruments such as the *UN Charter*, the *Universal Declaration of Human Rights*, and international human rights treaties.

The *Declaration* addresses both individual and collective rights. It recognises the obligation of States to protect indigenous cultural rights and identity, the rights to education, health, employment, traditional languages, and the right to self-determination. It outlaws discrimination against indigenous peoples, and promotes their full and effective participation in all matters that concern them. It also ensures their right to remain distinct groups, and to pursue their own priorities in economic, social and cultural development based upon the principle of free, prior and informed consent.

While articulating rights to separate development and cultural identity, the *Declaration* also explicitly encourages harmonious and cooperative relations between states and indigenous peoples. Most notably, article 46(1) of the *Declaration* states:

Nothing in this *Declaration* may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.<sup>46</sup>

The *Declaration* also provides guidelines for how indigenous rights should be protected in national legal systems. Article 38 provides that:

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this *Declaration*.<sup>47</sup>

Following its adoption by the General Assembly, the *Declaration* is now an active international legal instrument. According to the *UN Charter*, this means that all states are now bound to consider the *Declaration* in their dealings with indigenous peoples.

## 1. Australia's position on the *Declaration*

At the time of its passage, Australia was one of only four countries to vote against the *Declaration* in the UN General Assembly. Prior to the 2007 federal election, the Australian Labor Party stated that its official position if it were elected would be to maintain its long-term policy of support for the *Declaration*.<sup>48</sup>

Since taking office, the Government has been undertaking consultations on what steps should be formally taken to support the *Declaration*, and it is anticipated that a formal statement of commitment will be made by the government.

Under the UN Charter all states are already bound to consider the *Declaration* in their dealings with indigenous peoples and to act consistently with it. A national statement of support remains important, however, for substantive and symbolic reasons. A statement of support makes clear to the international community and to all Australians

46 *United Nations Declaration on the Rights of Indigenous Peoples GA Resolution 61/295*, UN Doc A/61/L.67 (2007) article 46(1).

47 *United Nations Declaration on the Rights of Indigenous Peoples GA Resolution 61/295*, UN Doc A/61/L.67 (2007) article 38.

48 Australian Labor Party, *ALP National Platform and Constitution* (2007) ch 13 (Respecting Human Rights and a Fair Go for All) par 44. At [http://www.alp.org.au/platform/chapter\\_13.php](http://www.alp.org.au/platform/chapter_13.php) (viewed 4 August 2008).

that the government takes the Declaration seriously and is a demonstration of good faith and of a desire to enter into genuine partnership with Indigenous peoples.

## 2. How should the Commonwealth government support the *Declaration*?

Between March and August 2008 my office consulted with a range of Indigenous peak bodies, as well as those organisations with a history of participation in international matters, to seek their feedback on how the Commonwealth government should support the *Declaration* within Australia. Two clear principles emerged regarding how the government should act to support the *Declaration*. These were:

- that the government must take a range of social and cultural steps to support the use of the *Declaration* as a standard within Australia; and
- that the government should use the *Declaration* as a tool to guide legal reform for Australian human rights protection mechanisms.

One of the most important ways in which the government should act is by widely publicising their support for the *Declaration*, recognising it as a positive document that sets out ambitions for a new partnership and relationship between Indigenous peoples and the government, based on the principle of self-determination.

By publicly committing to the *Declaration*, the government would make it unambiguous to Aboriginal and Torres Strait Islander peoples and to the world that Australia does respect international rights and standards with respect to indigenous peoples. Such a commitment to the *Declaration* would also assist in restoring the reputation of Australia within the UN as a country that sits at the forefront of promoting and protecting human rights.

As the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples has pointed out, the realisation of Indigenous peoples' rights at the domestic level will also heavily depend on the capacity of different actors working in mainstream policies and programs to understand and apply the various provisions of the *Declaration*.<sup>49</sup>

In order to promote understanding and use of the *Declaration*, the government should fund widespread human rights education in Australia. In Part 7 of this chapter, I discuss a more general need for human rights education as necessary to achieve a human rights culture. However, to promote the *Declaration* specifically, it would be useful for the government to:

- incorporate its terms into basic training curricula for high school students, lawyers, public servants, parliamentarians, and others with significant input into policy-making processes; and
- encourage state, territory and federal departments to publicly commit to the *Declaration* to guide their own operations, and encourage non-government organisations with which they have partnerships to follow suit.

Through application and awareness building about the *Declaration* in these areas, I believe that government and the bureaucracy will gain the skills and awareness to be able to start using human rights standards to guide their policy development.

Article 39 of the *Declaration* provides that 'indigenous peoples have the right to access financial and technical assistance from States and through international cooperation

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49 Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples*, UN Doc A/HRC/9/9 (2008) p 17.

for the enjoyment of the rights contained in the *Declaration*<sup>1</sup>. As such, the government also has a responsibility under the *Declaration* to commit training and resources to develop the capacity of organisations external to its own operations that can advance and promote Indigenous rights protection.

Funding and resources for the *Declaration* to be summarised in plain English and in Aboriginal languages for distribution in metropolitan, regional and remote communities would also remedy the Australian community's generally low level of understanding about the existence and effects of the *Declaration*.

The Government should also establish monitoring mechanisms on the uptake of the *Declaration* in Australia in order to allow government and community progress in advancing its standards to be tracked effectively. Over time, this would also facilitate adjustments in strategies to enhance awareness and implementation of the *Declaration*. In this regard, the *Declaration* elaborates a clear role for national human rights institutions,<sup>50</sup> as do the Objectives of the Second International Decade of the World's Indigenous Peoples.<sup>51</sup>

Amending the powers of the Australian Human Rights Commission so that it could take the *Declaration* into account in exercising its functions would therefore be an important step in strengthening the operation of the *Declaration* in Australia. In order for this to take place, the Federal Attorney General could declare that the *Declaration* is an international instrument relating to human rights and freedoms for the purposes of the *Human Rights and Equal Opportunity Commission Act*.<sup>52</sup> This would allow the Commission to:

- Examine laws and proposed laws to assess whether they are consistent with the *Declaration*;
- Inquire into acts and practices that may be inconsistent with or contrary to the *Declaration*;
- Promote public understanding, acceptance, and discussion of the *Declaration* in Australia;
- Undertake research and educational programs to promote the *Declaration*;
- Report to the Attorney General about laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to the *Declaration*;
- Report to the Attorney General about the action Australia needs to take to comply with the provisions of the *Declaration*;
- Publish guidelines for the avoidance of acts or practices done by or on behalf of the Commonwealth that would breach the *Declaration*; and
- Intervene, with the leave of the Court, in proceedings involving the *Declaration*.<sup>53</sup>

Finally, to promote the *Declaration* as a protective mechanism, the Commonwealth government should not only comply with, but also advance, the terms of the *Declaration*. Such action is called for by Article 42 of the *Declaration* itself, which provides:

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote

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50 *United Nations Declaration on the Rights of Indigenous Peoples GA Resolution 61/295, UN Doc A/61/L.67 (2007) articles 38–40.*

51 *Program of Action for the Second Decade of the World's Indigenous Peoples, UN Doc A/60/270 (2005).*

52 The power to make such a *Declaration* is conferred upon the Attorney General under s 47 of the *Human Rights and Equal Opportunity Commission Act 1986 (Cth)*.

53 *Human Rights and Equal Opportunity Commission Act 1986 (Cth) s 11.*

respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.<sup>54</sup>

The Chair of the UN Permanent Forum on Indigenous Issues spoke about the importance of states implementing the *Declaration* in her statement to the UN General Assembly on the occasion of the adoption of the *Declaration*:

The correct way to interpret the *Declaration* is to read it in its entirety or in a holistic manner and to relate it with existing international law.

This is a *Declaration* which sets the minimum international standards for the protection and promotion of the rights of Indigenous Peoples. Therefore, existing and future laws, policies, and programs on indigenous peoples will have to be redesigned and shaped to be consistent with this standard.<sup>55</sup>

The government should be guided by the recommendations of sessions of the United Nations Permanent Forum on Indigenous Issues (which have now developed detailed sets of recommendations regarding the advancement of the *Declaration* in the areas of economic and social development, culture, environment, health and human rights) as well as the recommendations of the United Nations Expert Mechanism on the Rights of Indigenous Peoples (which conducted its first session in October 2008). Text Box 4 below outlines some of the recommendations made by these bodies during their sessions in 2008.

**Text Box 4: Recommendations from the Permanent Forum on Indigenous Issues and the UN Expert Mechanism on the Rights of Indigenous Peoples for the advancement of the *UN Declaration on the Rights of Indigenous Peoples*<sup>56</sup>**

*Permanent Forum on Indigenous Issues*

128. The Forum thus invites the international community as a whole, States, indigenous peoples, non-governmental organizations, the private sector, academia and the media to promote the *Declaration* and apply it in their policies and programmes for the improvement of indigenous peoples' well-being around the world.

54 *United Nations Declaration on the Rights of Indigenous Peoples GA Resolution 61/295*, UN Doc A/61/L.67 (2007) article 42. The commitments of the *Declaration* also inform and strengthen a number of other international instruments that Australia is bound to consider in its development of policies and programs for Aboriginal and Torres Strait Islander peoples, including: the *Program of Action for the Second Decade of the World's Indigenous Peoples GA Resolution 59/174* (2005); the *UNESCO Universal Declaration on Cultural Diversity* (adopted by the General Conference of UNESCO, 2 November 2001); Agenda 21, the international program of action that accompanies the *Rio Declaration on Environment and Development – Report of the United Nations Conference on Environment and Development*, UN Doc A/CONF.151/26 (1992); the *Revised draft plan of action for the first phase (2005–2007) of the World Programme for Human Rights Education*, UN Doc A/59/525/Rev.1 (2005); and the *UN Decade of Education for Sustainable Development (A/RES/57/254)* (Adopted by the General Assembly 21 February 2003).

55 V Tauli-Corpuz, *Statement of Victoria Tauli-Corpuz Chair Of The UN Permanent Forum on Indigenous Issues on the Occasion of the adoption of the UN Declaration on the Rights Of Indigenous Peoples* (Speech delivered at UN General Assembly, New York, 13 September 2007). At [http://www.un.org/esa/socdev/unpfi/documents/Declaration\\_ip\\_vtc.doc](http://www.un.org/esa/socdev/unpfi/documents/Declaration_ip_vtc.doc) (viewed 31 January 2009).

56 Permanent Forum on Indigenous Issues, *Report on the seventh session (21 April–2 May 2008)*, UN Doc E/2008/43, E/C.19/2008/13 (2008). At <http://daccessdds.un.org/doc/UNDOC/GEN/N08/338/82/PDF/N0833882.pdf?OpenElement> (viewed 31 January 2009); Human Rights Council, *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its First Session (1–3 October 2008)*, UN Doc A/HRC/10/56 (2009). At <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/1st/docs/A-HRC-10-56.pdf> (viewed 31 January 2009).

130. The Permanent Forum decides to hold an international expert group meeting to discuss in greater detail the way in which the Forum should address its mandate under article 42 of the *Declaration*.

134. The Permanent Forum calls for the cooperation of all States, indigenous peoples, the United Nations system and other intergovernmental organizations in its task of ensuring that the *Declaration* reaches indigenous peoples in their communities by appropriate dissemination of the text in indigenous peoples' own languages.

139. The Permanent Forum ...encourages all States to submit substantive information on measures taken to implement the *United Nations Declaration on the Rights of Indigenous Peoples*.

144. The Permanent Forum recommends that the United Nations system promote understanding of the *United Nations Declaration on the Rights of Indigenous Peoples* among decision makers, public officials, justice systems, national human rights institutions and non-governmental organizations.

145. The Permanent Forum recommends that national human rights institutions and other relevant national and regional bodies, including the African Commission on Human and Peoples' Rights, promote the rights of indigenous peoples and monitor the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, and ensure that the international standards on indigenous peoples' rights are translated into national laws.

148. The Permanent Forum recommends that the United Nations system continue to build the capacities of indigenous peoples' organizations and to develop their knowledge and skills to have their rights respected, protected and fulfilled.

150. The Permanent Forum recommends that the Office of the United Nations High Commissioner for Human Rights and relevant United Nations agencies and organs establish specific units for indigenous peoples' issues to contribute to the implementation of the *Declaration* in accordance with its articles 41 and 42.

151. The Permanent Forum recommends that States include representatives of indigenous peoples in the national consultation process for the preparation of national reports to be submitted to the Human Rights Council for universal periodic review.

*UN Expert Mechanism on the Rights of Indigenous Peoples – First session report*

23. The *United Nations Declaration on the Rights of Indigenous Peoples* was unanimously seen as a vital instrument providing a normative framework to guide the work of the Expert Mechanism.

24. The opportunity for the Expert Mechanism to establish effective collaboration and contribute substantially to the work of the Council was emphasized. Some recommended that the *United Nations Declaration on the Rights of Indigenous Peoples*, as an international instrument adopted by the Council and the General Assembly, be used as a reference in the context of the universal periodic review process. It was also suggested that the Expert Mechanism engage with other international human rights mechanisms, including the treaty bodies, as well as with regional and national human rights bodies, in particular national human rights institutions and the Working Group on Indigenous Populations/ Communities of the African Commission on Human and Peoples' Rights.

28. The indigenous caucus, on behalf of all indigenous observers, proposed that the agenda of the Expert Mechanism include a permanent item on the *United Nations Declaration on the Rights of Indigenous Peoples*. Three thematic issues were identified as possible sub-agenda items for the second session: (a) the right to self-determination and the right to development; (b) free, prior and informed consent; and (c) adjudication, remedies, repatriation and redress.

### 3. How can Indigenous Australians use the *Declaration* now?

One of the most effective ways that Indigenous Australians can use the *Declaration* is simply by referring to it as an applicable standard. This is because, as is the case with the *Universal Declaration of Human Rights*, the rights set out in the *Declaration* will be most effectively protected in Australia when they become a standard that is recognised and referred to by the community at large.

Although the *Declaration* does not have the force of an international treaty, as indigenous peoples and State parties begin to demonstrate a continuous pattern of use for the *Declaration*, its moral and legal significance as a source of international state obligations will continue to grow. Even prior to the passage of the *Declaration* through the General Assembly, legal commentators had argued that aspects of the draft *Declaration* already generated customary international obligations for states, because of the extensive manner in which the draft *Declaration* and its components was referenced by governments, UN bodies, academics, international courts, and Indigenous peoples themselves.<sup>57</sup>

In recognition of this process, a number of land councils in Western Australia have already committed to using the *Declaration* as the basis for negotiation with mining companies.<sup>58</sup> I would encourage other Indigenous organisations to ‘adopt’ the *Declaration*, and use it as a framework for engagement and partnership with governments and third parties in a similar way. Through building up patterns of consistent usage, standards such as free, prior and informed consent will, over time, be built into ordinary protocols for engagement with Indigenous communities, whether for land or development initiatives, or for other negotiations on policy decisions that affect Indigenous rights.

Another way in which the *Declaration* can be used by Indigenous peoples at the state and territory level is in relation to the existing human rights guarantees provided by *Human Rights Act (2004)* in the ACT and the *Charter of Human Rights and Responsibilities Act (2006)* in Victoria.

According to the legal mechanisms that exist under these Acts, the full ambit of international law – including the *Declaration* – can be brought to bear on judicial interpretations of the terms under the human rights legislation.

As an example, the *Victorian Charter of Human Rights and Responsibilities Act* aims to improve the work of government by, for example, compelling decision-makers to act compatibly with human rights. Section 32(1) provides that ‘[s]o far as is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.’ Section 32(2) states that ‘international law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right...[t]o...be considered when interpreting a statutory provision’.

The *UN Declaration on the Rights of Indigenous Peoples* is part of the body of international law referred to in section 32(2) meaning that there is an obligation on decision makers to interpret their human rights obligations consistent with the UN Declaration. The application of the *Declaration* to Human Rights Acts is discussed further in Part 3 of the chapter.

It may also be possible for Indigenous peoples to bring actions under the (*Racial Discrimination Act 1975 (Cth)* (‘RDA’) for any abrogation of their rights as set out by the

57 S James Anaya, *Indigenous Peoples in International Law* (2004) p 65–68.

58 See, for example, the Mining Policy statement of the Goldfields Land and Sea Council: Goldfields Land and Sea Council, *Our Land is Our Future* (2008). At [http://www.glc.com.au/pu\\_xx/Mining%20Policy%20@%20April08.pdf](http://www.glc.com.au/pu_xx/Mining%20Policy%20@%20April08.pdf) (viewed 20 January 2009).

*Declaration*. The RDA provides protection for a person's human rights and fundamental freedoms on an equal footing with persons of other races. The case law on the scope of terms 'human rights' and 'fundamental freedoms' under the RDA suggests that the international rights contained in the *Declaration* may fall within the ambit of those entitlements protected by section 9 and section 10 of the RDA.

### Text Box 5: How is the *Declaration* being used in other legal systems?

Over the past year, the use and application of the *Declaration* has considerably progressed:

- The Supreme Court of Belize considered and applied the standards of the *Declaration* in considering Mayan entitlements to land rights and resources;<sup>59</sup>
- The Republic of Ecuador passed a new constitution that was directly informed by the *Declaration*, with the third chapter of the constitution declaring the applicability of collective rights as they pertain to indigenous peoples;<sup>60</sup>
- Article 13 of the interim constitution of Nepal now commits the country to the principle of equality before the law, while recognising the benefits of affirmative action programs for indigenous peoples and other minority groups;<sup>61</sup> and
- the *Declaration* has also been used as a reference point for ongoing constitutional reform processes in a number of UN member states.<sup>62</sup>

International bodies have also begun to apply the *Declaration*, even to member states that voted against its passage in the General Assembly. For example, in its concluding comments on the United States' periodic report to the Committee on the Elimination of Racial Discrimination in 2008, the Committee noted the position that the United States had taken in the General Assembly, but nevertheless recommended that the *Declaration* be used as a guide to interpret the State party's obligations to the United States' First Nations peoples.<sup>63</sup>

2008 also saw the Permanent Forum on Indigenous Issues restructure its agenda and develop new methods of engaging others in its work in order to take up its new mandate of promoting and implementing the *Declaration*. Specifically, the forum committed to:

- adopting the *Declaration* as the Forum's legal framework;
- making the implementation of the *Declaration* one of the Forum's mandated areas;
- integrating the *Declaration* into the Forum's recommendations on its prior mandated areas;
- creating a new agenda item allowing for dialogue between the Forum and other UN agencies and funds on their uptake of the *Declaration*; and

59 *Manuel Coy at al I v Attorney General (Belize)* Claim Nos 171 and 172, 2007.

60 *República del Ecuador, Constituciones de 2008*, ch III: Constitutional Guarantees.

61 *Interim Constitution of Nepal (2007)* art 13.

62 Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples*, UN Doc A/HRC/9/9 (2008) p 16.

63 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, UN Doc: CERD/C/USA/CO/6 (2008) par 29.

- committing to every even calendar year being termed a ‘policy year’ (where a ‘special theme’ is discussed) and each odd calendar year being termed a ‘review year’ (where the implementation of the Forum’s past recommendations on specific themes is reviewed).<sup>64</sup>

## 4. Ratification of ILO Convention 169

The adoption of the *Declaration* by the UN General Assembly settles once and for all a range of issues relating to the status of indigenous peoples in international law. Of most significance is that it recognises that indigenous peoples – wherever they live – have an ongoing collective livelihood as distinct groups, and that governments have obligations to recognise and protect this.

This collective status of indigenous peoples is affirmed through Article 1 of the *Declaration* which states that:

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

The significance of this recognition is most clearly put in Article 3 of the *Declaration*. This states that:

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

Prior to the adoption of the *Declaration*, this issue of collective rights was disputed by some. All international instruments created prior to the *Declaration* have not provided clear recognition of the collective rights of Indigenous peoples or of our entitlement as peoples to self-determination.

With this question now settled in the *Declaration*, and settled with an overwhelming majority view of states, it is time for Australia to revisit ratifying the *International Labour Organisation Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries* (‘ILO Convention 169’).

ILO Convention 169 is a comprehensive treaty that creates binding legal obligations on governments. It requires that governments introduce or amend processes for engagement with Indigenous peoples to ensure that they fully respect the rights of Indigenous peoples, as set out in the convention. It also provides regular international scrutiny and reporting mechanisms to identify whether a country is meeting its obligations or falling short.

The drafting of the convention in the late 1980s had been controversial. This was primarily due to the fact that the convention does not recognise the collective status of indigenous peoples or our right to self-determination.

Article 1.3 of the Convention reads:

The use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

64 International Service for Human Rights, ‘Permanent Forum on Indigenous issues: 7th Session’ *Human Rights Monitor Series*. At [http://www.ishr.ch/hrm/nymonitor/new\\_york\\_updates/permanent\\_forum/nyu\\_perm\\_forum\\_7session\\_a\\_fresh\\_approach.pdf](http://www.ishr.ch/hrm/nymonitor/new_york_updates/permanent_forum/nyu_perm_forum_7session_a_fresh_approach.pdf) (viewed 4 December 2008).

Because of this, indigenous peoples in many regions of the world have been opposed to the Convention as not providing sufficient or appropriate levels of protection of our rights.

However, with the passage of the *Declaration*, the deficiencies of the *ILO Convention 169* have now been remedied. This is because the recognition of the collective rights and self-determination of indigenous peoples through the *Declaration* fundamentally changes the meaning of the phrase 'indigenous peoples' throughout *ILO Convention 169*. With this deficiency addressed, the *ILO Convention 169* now provides a framework for implementing the *Declaration* and ensuring that Indigenous peoples' rights are fully respected and protected in Australian law.<sup>65</sup>

### Text Box 6: The Content of the ILO Convention 169<sup>65</sup>

The International Labour Organisation (ILO) has been a specialised agency of the United Nations (UN) since 1946. It promotes international recognition of human rights and labour rights by formulating international labour standards and providing practical assistance to governments to implement these.

The *ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries* was adopted in 1989. The convention consists of 44 articles. It is based on respect for indigenous cultures and their way of life, the traditions and customary laws of indigenous and tribal peoples.

The underlying principle of the Convention is that indigenous and tribal peoples will continue to be distinct parts of their national societies with their own structures and traditions. It also recognises that indigenous and tribal peoples have a right to take part in the decision-making processes of the States in which they live; be consulted through appropriate procedures and representative institutions, on measures which may affect them directly.

The convention prohibits discrimination against indigenous peoples and identifies obligations for States to recognise and protect indigenous peoples' rights in areas such as: land and natural resources, employment and training, handicraft and rural industries, social security, health, and education.

The ratification of ILO Convention 169 would confirm that the commitment of the Australian government to the protection of Indigenous peoples rights is more than a rhetorical or symbolic action, and that it is something that will underpin a new relationship with Indigenous peoples. It would lay the foundations for a new partnership based on mutual respect, good faith and recognition of human rights. For this reason, I have also included a recommendation in this report relating to ILO Convention 169.

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<sup>65</sup> The full text of the ILO Convention 169 is available at: <http://www.unhchr.ch/html/menu3/b/62.htm> (viewed 4 February 2009).

## 5. Recommendations

**Recommendation 1**

That the Commonwealth Government make a statement of support in the UN General Assembly and UN Human Rights Council for the *UN Declaration on the Rights of Indigenous Peoples* as a matter of priority.

**Recommendation 2**

That the Commonwealth Attorney General schedule the UN Declaration on the Rights of Indigenous Peoples to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

**Recommendation 3**

That the Joint Standing Committee on Treaties conduct consultations, including with Indigenous peoples, on the desirability of ratifying *ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*.

## Part 3: A Human Rights Act for Australia: Recognising and protecting Indigenous rights

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It comes as a surprise to many Australians when they realise that in Australia we have one of the weakest systems for the protection of human rights in the western world.

In 2008, Australia remains the only democratic country in the world without a national bill of rights or charter of rights<sup>66</sup> in some form. We have not implemented in domestic legislation more than half of the international legal obligations that we have undertaken to respect through ratifying international human rights treaties.

### Text Box 7: Rights and Responsibilities

Human rights are for everyone, everywhere, every day.

Human rights recognise our freedom as people to make choices about our life and develop our potential as human beings. They are about living a life with equality and dignity, free from fear, harassment or discrimination.

There are many human rights, such as: the right to life, freedom from torture and other cruel and inhuman treatment, rights to a fair trial, free speech and freedom of religion, rights to health, education and an adequate standard of living.

Human rights are written down in international agreements called ‘covenants’ and ‘conventions’ or treaties. These are made by representatives of national governments at the United Nations and reflect international agreement on what human rights principles and standards should be recognised and protected. They are common standards of achievement.

The first and most important international statement on human rights and the principles of equality, dignity and freedom was the *Universal Declaration of Human Rights* adopted in 1948.

In addition to the *Universal Declaration*, our human rights are set out in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) and several other conventions. All Australians have the human rights described in the agreements and ratified by Australia.

Human rights also involve responsibilities and duties toward other people and the community. Individuals have a responsibility to ensure that they exercise their rights in a manner that does not infringe for the rights of others. For example:

- when a person exercises their right to freedom of speech, they are not entitled to infringe someone else’s right to privacy or to racially vilify another person; or
- Everyone has a right to be free from violence and intimidation, and a person cannot breach this right on the basis that they are exercising their culture.

66 The distinction in terminology between a Bill of Rights and a Charter of Rights refers to the distinction between constitutional entrenchment of rights (e.g. the Bill of Rights in the US *Constitution*) and legislative entrenchment of rights (i.e. The UK *Human Rights Act*). In this report the legislative forms of entrenchment of rights will be referred to as ‘Human Rights Acts’.

Governments also have a responsibility to ensure that people are able to enjoy their rights fully. Governments cannot themselves conduct actions that breach people's rights. They are required to establish and maintain laws that prevent others from breaching the rights of individuals. They are also required to deliver services that enable people to access their rights on a basis of equality and non-discrimination.

There is a growing momentum to address the current lack of protection and for human rights to be legislatively entrenched in Australia at all levels of government. Human Rights Acts have now been introduced in one state and one territory, with inquiries looking into establishment of similar Acts conducted in two other states. In 2009, whether there should be a national Human Rights Act will be a central discussion in the Australian community.

The primary question I will explore here is to what extent Indigenous peoples' rights are reflected and protected in these emerging Human Rights Acts, and to what extent they could be protected in a national Human Rights Act.

Based on an analysis of what different state and territory community consultations for a legislative entrenchment of human rights have identified in this regard, I explore some of the of the key human rights that Indigenous peoples have identified as necessary to recognise and protect. I also comment on the processes that are essential to undertake in the development of a Human Rights Act to ensure adequate Indigenous participation.

### **Text Box 8: What is a Human Rights Act?**

A Human Rights Act is an ordinary piece of legislation (or statute). It is sometimes referred to as a statutory charter of rights.

A Human Rights Act contains a statement of the human rights that are protected. Examples of rights that can be protected include:

- right to equality and non-discrimination
- right to life
- right to self-determination
- right to be free from torture and other cruel or degrading treatment
- right to be free from slavery and forced labour
- right to liberty and to be free from arbitrary arrest or detention
- right to freedom of movement
- right to be treated equally by the courts, to be presumed innocent until proven guilty and to be tried without delay
- rights to effective participation in decision making and free, prior and informed consent
- right to live with your family
- right to work and to be treated well at work
- right to form and join a trade union
- right to an adequate standard of living, including adequate food, clothing and housing
- right to access appropriate health care
- right to a basic education

- right to maintain culture and language
- right to access services regardless of race, gender, age, disability
- right to privacy
- right to think what you like and practise any religion
- right to say what you like (without inciting hatred or violence)
- right to vote and participate in public affairs
- right to be treated equally by the law

A Human Rights Act also contains processes to ensure that these rights are protected. This can include processes for:

- Ensuring that all new federal laws are put through a 'human rights test' by:
  - requiring that each bill introduced into Parliament be accompanied by a human rights compatibility statement;
  - requiring Parliament to scrutinise each bill to ensure its compatibility with the Human Rights Act (for example through a special Parliamentary Human Rights Committee); and
  - requiring Parliament to publicly explain the justification if it enacts a law that is inconsistent with the Human Rights Act.
- Ensuring that all government policy-making consider the human rights implications, by requiring that all cabinet submissions be accompanied by a Human Rights Impact Assessment.
- Ensuring that all public authorities (for example Centrelink, the Australian Taxation Office and Medicare) respect the human rights protected in the Human Rights Act by:
  - requiring them to take the rights into account in decision-making and policy-setting processes;
  - requiring them to prepare internal Human Rights Action Plans;
  - requiring them to report annually on compliance with the Human Rights Act.
- Providing for the review of any law found to be incompatible with the Human Rights Act by:
  - giving courts the power to issue a *Declaration* of incompatibility;
  - requiring that all *Declarations* be tabled in Parliament;
  - requiring Parliament to consider whether the law in question should be changed.
- Ensuring that courts and tribunals interpret legislation in a manner that is consistent with the human rights protected in the Human Rights Act.
- Providing individuals whose human rights under the Human Rights Act have been breached with access to remedies, which might include:
  - internal complaint handling mechanisms within federal public authorities;
  - conciliation of complaints regarding human rights breaches;
  - legal remedies such as an injunction or *Declaration*;
  - a cause of action in the courts; and
  - the right to seek reparations, including compensation where necessary and appropriate.

## 1. The emerging momentum for Human Rights Acts

Since 2004, the momentum for legislative entrenchment of human rights in Australia at the state, territory and national levels has been building.<sup>67</sup> Since 2004, positive recommendations and enactments of charters of rights have included:

- In 2004 the Australian Capital Territory enacted the *Human Rights Act 2004 (ACT)*;
- Victoria adopted the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* which commenced on 1 January 2007;
- In 2006 the Tasmanian Law Reform Institute held community consultations on the enhancement of human rights protection in Tasmania and recommended that a Charter of Human Rights and Responsibilities be enacted in Tasmania;<sup>68</sup>
- In 2007, following community consultations, the Committee for a Proposed WA Human Rights Act recommended that a Human Rights Act be enacted in Western Australia.<sup>69</sup>

In the absence of a national or state/ territory Human Rights Act, some local governments have also passed their own charter of rights. For example, in 2004 the Hume City Council passed the Hume Social Justice Charter which includes a citizens' bill of rights.<sup>70</sup>

The development of a Human Rights Act in states and territories has in all cases involved community consultations being held to establish the level of community support in the state/ territory on whether there is support for a Human Rights Act, what rights it should include and what processes for enforcement it should contain.

Since the election of the Rudd government, there have been growing expectations of the Commonwealth Government to act on the Australian Labor Party commitment to 'initiate a public inquiry about how best to recognise and protect the human rights and freedoms enjoyed by all Australians.' This commitment was made in the 2007 ALP National Platform.<sup>71</sup> At the *2020 Summit* in April 2008 one of the priority themes identified for the future of Australian governance was a charter of rights:

### 9.3 Charter of rights:

- 9.3.1 that Australia is a country where respect and protection of the human rights of all people are maintained and strengthened
- 9.3.2 that a national process is conducted to consult with all Australians as to how best protect human rights
- 9.3.3 that there be a statutory charter or Bill of Rights (majority support) or a parliamentary charter of rights or an alternative method (minority support).<sup>72</sup>

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67 For a timeline of federal attempts to introduce human rights laws and charters of rights at the federal and state/territory levels see, Gilbert + Tobin Centre of Public Law, *History of Charters of Human Rights in Australia* (2008). At <http://www.gtcentre.unsw.edu.au/Resources/cohr/historyChartersofHumanRights.asp> (viewed 20 January 2009).

68 Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania*, Report No 10 (2007).

69 Consultation Committee for a proposed WA Human Rights Act, *A WA Human Rights Act* (2007).

70 Hume City Council, *Hume Social Justice Charter 2004* (2004). At <http://www.hume.vic.gov.au/Files/SocialJusticeCharter2004FINALwCover.pdf> (viewed 20 January 2009).

71 Australian Labor Party, *ALP National Platform and Constitution* (2007) ch 13 (Respecting Human Rights and a Fair Go for All) par 7.

72 Commonwealth of Australia, *Australia 2020 Summit-Final Report* (2008), p308. At: [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_9\\_governance.doc](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.doc) (viewed 1 December 2008).

In October 2008 the Attorney General indicated the government's intent to act on this commitment and conduct a consultation to seek community views on how best to protect and promote human rights and responsibilities.<sup>73</sup>

This momentum has now culminated in the Commonwealth government's announcement on 10 December 2008 that national community consultations will be held on the protection and promotion of human rights in Australia. The national consultation will look at three key questions:

1. Which human rights and corresponding responsibilities should be protected and promoted?
2. Are these human rights currently sufficiently protected and promoted?
3. How could Australia better protect and promote human rights?

An independent committee has been appointed to conduct the national consultation, consult broadly with the community, and report to the government by 31 July 2009.<sup>74</sup>

A Human Rights Act has been identified by many human rights organisations as the central plank of any reform to our system of human rights protection in Australia.

## 2. Recognition of Indigenous rights in existing Human Rights Acts in Australia

Indigenous peoples are entitled to the full range of human rights along with every other member of society.

Indigenous peoples will benefit from having formal protections for non-discrimination, equality before the law, self-determination as well as the full range of civil, political, economic, social and cultural rights in a Human Rights Act.

While all such rights apply generally to all members of the Australian community, they have a particular importance for Indigenous peoples. This is due to the overwhelming levels of disadvantage faced by Indigenous peoples, placing us among the most vulnerable to our human rights being breached, as well as the ongoing impacts of our historical treatment as a peoples.

For this reason, a Human Rights Act must be comprehensive in its scope and include economic, social and cultural rights (such as the rights to health, education and housing) in addition to civil and political rights.

The need for such comprehensive coverage in a Human Rights Act is demonstrated by examining the work of the Social Justice Commissioner over the past decade. The vast majority of research and recommendations that have been made by the Commissioner are to address outstanding human rights issues faced by Indigenous peoples relate to economic, social and cultural rights and rights to effective participation in decision making that relates to the interests of Indigenous peoples.

A Human Rights Act that does not address these issues will be less relevant to Indigenous peoples and risks being less effective in addressing some of the key human rights challenges facing Indigenous peoples and Australia.

I discuss options for ensuring that the scope of a Human Rights Act is adequate from an Indigenous perspective further below.

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73 R McClelland, *Protecting Human Rights Conference* (Speech delivered at Protecting Human Rights Conference, Melbourne, 3 October 2008). At: [http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Speeches\\_2008\\_3October2008-ProtectingHumanRightsConference](http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Speeches_2008_3October2008-ProtectingHumanRightsConference) (viewed 11 December 2008).

74 National Human Rights Consultation, <http://www.humanrightsconsultation.gov.au> (viewed 23 December 2008).

There is, however, a second set of issues facing Indigenous peoples in relation to the scope of a Human Rights Act. This is whether such protection should consist entirely of general protections which apply to all Australians or whether it should additionally contain protections that specifically address the acute human rights issues faced by Indigenous peoples.

Under international law, all human rights protections are required to be applied consistently with other human rights instruments. Consequently, the Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of all forms of Racial Discrimination (CERD) have been interpreted consistently with indigenous peoples' rights. The CERD Committee noted in their General Comment 23 on indigenous peoples:

1. The Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.
4. The Committee calls in particular upon States parties to:
  - (a) Recognize and respect indigenous peoples distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;
  - (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;
  - (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
  - (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;
  - (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.
5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.<sup>75</sup>

The UN Human Rights Committee has also noted that the protection of minority group rights and protection of culture (in Article 27 of the ICCPR and Article 30 of the Convention on the Rights of the Child) applies to indigenous peoples and protects their unique characteristics include connection to land, environment and culture. Article 27 of the ICCPR reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

In General Comment No. 23 the Human Rights Committee observed that under Article 27 group minority rights also apply to indigenous peoples as follows:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of

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<sup>75</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, UN Doc A/52/18, annex V (1997) pars 1,2 and 5. At [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument) (viewed 5 February 2008).

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indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.<sup>76</sup>

With the adoption of the *UN Declaration on the Rights of Indigenous Peoples*, it can be expected that all human rights covenants and conventions will even more explicitly be interpreted in light of the specific protections contained in the *Declaration*.

At the domestic level, the Human Rights Acts in the ACT and Victoria also provide for the Acts to be interpreted consistently with international law.<sup>77</sup> This includes such sources as the ICCPR, other human rights treaties to which Australia is a party, general comments and views of the United Nations human rights treaty monitoring bodies, declarations and standards adopted by the United Nations General Assembly that are relevant to human rights and judgments of domestic, foreign and international courts and tribunals.

This provides for even where indigenous rights are not explicitly recognised. There is still a requirement that a decision be made consistently with internationally recognised indigenous rights.

To date, in the consultations on Human Rights Acts at the state and territory level, there has been an active debate on whether such Acts should also contain additional specific protections for Indigenous peoples.

Such specific protections might include recognition of Indigenous peoples' relationship to land; preservation of language; rights to participation, including to self-government, and protection of traditional knowledge and biodiversity.

In the Human Rights Acts enacted to date in Australia, there has been limited specific or distinct recognition of Indigenous human rights. Text Box 9 below contains the current specific references to Indigenous rights in existing Human Rights Acts in Australia.<sup>78</sup>

### **Text Box 9: Indigenous Peoples' rights in existing Human Rights Acts in Australia**

#### *1. Human Rights Act 2004 (ACT)*

Preamble

7. Although human rights belong to all individuals, they have special significance for Indigenous people – the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

#### *2. Charter of Human Rights and Responsibilities Act 2006 (Vic) (Victorian Charter)*

Preamble

Human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.

76 Human Rights Committee, *General Comment No. 23: The Rights of Minorities*, UN Doc CCPR/C/21/rev.1/Add.5 (1994) para 7. At [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument) (viewed 5 February 2008).

77 *Human Rights Act 2004 (ACT)*, section 31 and *Charter of Human Rights and Responsibilities Act 2006 (VIC)*, s 32.

78 Internationally, Indigenous peoples have only been specifically recognised in the Canadian Charter of Rights and Freedoms (Preamble, s 25); but the South African *Constitution* also recognises the importance of supporting indigenous languages (s 6) and recognises traditional leaders and customary law (ch 12).

19 Cultural rights

(2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community –

- (a) to enjoy their identity and culture; and
- (b) to maintain and use their language; and
- (c) to maintain their kinship ties; and
- (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

How best to protect Indigenous rights in a Human Rights Act was an issue of discussion and debate that emerged in all the state and territory consultation processes for Human Rights Acts to date.

## 2.1 Australian Capital Territory

In the ACT the terms of reference for the ACT Bill of Rights Consultative Committee<sup>79</sup> specifically required the Committee to consider whether Indigenous rights should be included in a Human Rights Act. The Committee consulted with representative groups and sectors of the Indigenous community, and also received submissions from Indigenous people in their personal capacity.

In its 2003 report the Committee noted that several respondents to the ACT community consultations identified the lack of protections for Indigenous peoples' rights as a particular concern, noting the vulnerability of Indigenous peoples to having their rights violated.

There was overwhelming support for a bill of rights in the ACT from Indigenous peoples and their representative organisations. This support derived from a sense that ACT laws did not adequately protect the rights of Indigenous people.<sup>80</sup>

A range of views were expressed on whether Indigenous rights should be specifically recognised in the Act. The report noted that some respondents requested that specific Indigenous rights be recognised in a Human Rights Act including:

- the right to land;
- the right to have control of resources and determination in financial matters that come from those resources;
- the right to heritage; and
- protection against genocide.<sup>81</sup>

However, other respondents were concerned that there was insufficient public support for explicit references of Indigenous rights to be included. They felt that protections for Indigenous peoples could be sufficiently found in strong, general equality and non-

79 One of the four Committee members was Aboriginal: Larissa Behrendt, Professor of Law and Indigenous Studies and Director of the Jumbunna Indigenous House of Learning at the University of Technology, Sydney and member of the Council of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

80 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) par 5.50. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

81 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) par 5.56. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

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discrimination clauses based on those found in the International Convention on the Elimination of all forms of Racial Discrimination and the International Covenant on Civil and Political Rights.<sup>82</sup>

The Committee consequently recommended that the ACT Human Rights Act include a preamble that recognises the special historical context of Indigenous peoples in the Act and rather than recognising specific Indigenous rights, that the general rights be interpreted to respond to the concerns of the ACT Indigenous communities.<sup>83</sup>

Although not making any express reference to Indigenous peoples, the Committee also recommended that a general right to self-determination be included in the Act:

### Clause 12 Self-determination

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

12.2 All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law.

12.3 The human rights set out in this Schedule shall not be interpreted as impairing the inherent right of all peoples to enjoy and freely utilise their natural wealth and resources.<sup>84</sup>

The Committee also felt that it was important that the Act should support the special agreements already existing between Indigenous peoples and the ACT government for service delivery, land agreements and protection of other rights and development of protocols.<sup>85</sup>

To ensure there was an opportunity for the effectiveness of this approach to be reviewed, the Committee further recommended that a five year review of the proposed Act consider: the effectiveness of the legislation in protecting Indigenous rights; and whether specific Indigenous rights should be included in the legislation.<sup>86</sup>

## 2.2 Victoria

In Victoria the Human Rights Consultation Committee<sup>87</sup> sought submissions in response to a Discussion Paper. Specific materials were developed for Indigenous communities that provided a background to the issues, as well as specific information on human rights issues relevant to Indigenous Victorians. The Committee also undertook specific consultations with Indigenous peoples.<sup>88</sup>

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82 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) p 100–104. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

83 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) par 5.62. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

84 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) app 4, p 22. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

85 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) par 5.63. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

86 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) p 59. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

87 None of the four Committee members were Indigenous.

88 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 143.

The Victorian Committee noted many respondents to the Victorian consultations had called for more specific rights for Indigenous peoples to be recognised in a Human Rights Act. Racism, discrimination, land rights and cultural identity were the key human rights issues for which Indigenous respondents felt there was inadequate protection.<sup>89</sup>

However, the Victorian Committee recommended that the initial focus of the Act should be ‘democratic rights that apply equally to everyone’<sup>90</sup> with the proviso that a mechanism for review and change be incorporated to enable these rights to be considered again at a later stage.<sup>91</sup> Specifically, the Committee recommended that a future review consult with Indigenous communities on whether a right to self-determination should be included in the Charter, and what the appropriate definition and scope of that right should be.<sup>92</sup>

The extent to which the Victorian Committee recommended that there should be a reflection of Indigenous rights in the Act included that:

- the Charter’s preamble emphasise that the rights, responsibilities and respect recognise the special significance of human rights to Indigenous peoples as the traditional owners of the land;<sup>93</sup>
- a right to self-determination not be included as a free-standing right, but should be reflected in the preamble;<sup>94</sup>
- the right to culture should specifically recognise ‘the right of Indigenous peoples to enjoy their own culture, profess and practise their own religion and use and enjoy their own language’.<sup>95</sup> This was in light of the strong support for such recognition among Indigenous respondents:

278 petitions, organised by the Victorian Aboriginal Legal Service, in support of a Charter of Human Rights advocated for the inclusion of the right to self-determination for Indigenous peoples and the protection of their culture.<sup>96</sup>

It was also in light of the Committee noting that a recognition of Indigenous peoples’ right to culture would be consistent with Australia’s obligations under article 27 of the ICCPR, which the United Nations Human Rights Committee had interpreted as extending to the cultural rights of Indigenous peoples.<sup>97</sup>

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89 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 8.

90 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p iii.

91 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p iii.

92 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 137.

93 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 24.

94 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 46.

95 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 41.

96 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 146.

97 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 41.

## 2.3 Tasmania

In Tasmania, the Tasmanian Law Reform Institute established a Human Rights Community Consultation Committee to undertake a four month community consultation process on the need for a Human Rights Act.<sup>98</sup> Their report noted that respondents highlighted the lack of human rights protections available to Indigenous Tasmanians<sup>99</sup> and the need for further protection of Indigenous Tasmanians' rights including the preservation of individual and community identity, cultural and spiritual identity, and the preservation of culture.<sup>100</sup>

The Institute recommended that a Tasmanian Human Rights Act include the specific right of Indigenous Tasmanians to 'maintain their distinctive identity, culture, kinship ties and spiritual, material and economic relationship with the land'.<sup>101</sup> It further recommended that the Act contain: a right to self-determination modelled on clause 12 of the ACT Bill of Rights Consultation Committee's draft Human Rights Bill appended to its report; and a provision protecting the cultural rights of Indigenous Tasmanians and other minority cultural groups modelled on section 19 of the Victorian Charter.<sup>102</sup>

With regards to the right to self-determination, the Institute noted that although the right was couched in terms which would have a general application, it will nevertheless 'have particular significance and, therefore, particularly strong implications for Tasmanian Indigenous communities'.<sup>103</sup>

## 2.4 Western Australia

In Western Australia (WA) the Consultation Committee for a Proposed Human Rights Act<sup>104</sup> was engaged in 2007 to seek the community's views on a draft Bill of Rights issued for discussion. The WA Committee developed a draft Bill for their consultations and held public forums in rural and remote areas. They received submissions from Indigenous representative bodies and government bodies and advisors working on Indigenous issues.

The draft Bill provided for Indigenous peoples to have distinct cultural rights to:

- (a) enjoy their identity and culture;
- (b) maintain and use their language; and
- (c) maintain their kinship ties.

However, the WA Committee received many submissions that called for the incorporation of additional specific rights for Indigenous peoples including: right to self-determination; right to cultural security; right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs; and freedom to

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98 None of the six Committee members were Indigenous.

99 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) p 26.

100 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) par 4.16.2.

101 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) p 124.

102 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) p 12.

103 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) par 4.16.47.

104 One of the four committee members was Aboriginal: Colleen Hayward, Manager, Kulunga Research Network, Telethon Institute for Child Health Research.

establish, maintain, protect and access places of worship and religious or spiritual significance and a freedom from desecration or damage to such places.<sup>105</sup>

The WA Committee felt that these issues required further consideration than was possible within the scope of its consultations and recommended that the requirement for reviews of the Act should expressly require consideration of the inclusion of the right to self-determination and the other specific rights identified above.<sup>106</sup>

However, the WA Committee did recommend the following specific rights of Indigenous peoples be included in an Act:

- the right for Indigenous Western Australians to work in partnership with the Government in setting priorities for, and in the development, implementation and review of, policies, programs and services as they impact on Indigenous peoples;
- the right of Indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures.<sup>107</sup>

The WA Committee also recommended that a preamble could acknowledge the special status of Indigenous Western Australians.<sup>108</sup>

## 2.5 Community models

Although not considered here in detail, I note that the model Human Rights Bill 2006 proposed by the Australian Human Rights Group, and which was developed through consultations with community groups, recognises Indigenous peoples' rights as follows:

36 The rights of Indigenous peoples

(1) Indigenous peoples have the collective right to live in freedom, peace and security and to full guarantees against genocide or any other act of violence.

(2) Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

(3) Indigenous peoples have the right to practise and revitalize their spiritual and cultural traditions, customs and ceremonies.

(4) These rights may not be exercised in a manner inconsistent with any of the human rights set down in this Act.<sup>109</sup>

## 3. Recognition and protection of Indigenous rights in a national Human Rights Act

I have been a strong advocate for a national Human Rights Act as a means of strengthening the recognising recognition and protection of Indigenous rights. In

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105 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) p 95.

106 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) p 97.

107 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) p 97–98.

108 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007), p 128.

109 Australian Human Rights Group, <http://www.humanrightsact.com.au/2008/about-a-hr-act/> (viewed 22 December 2008).

a speech I delivered in April 2008 I noted that democracy alone does not prevent politicians and public authorities from pursuing policies that override the collective or individual rights of minority groups. When you are 2 percent of the total population, majority rule does not guarantee that your rights will be protected – especially if the interests of more powerful or prominent interests in society are affected.<sup>110</sup>

In the environment created by the Prime Minister's National Apology in 2008, I believe that a Human Rights Act in Australia could provide greater protection of rights for Indigenous peoples.

In all the state and territory community consultations on Human Rights Acts to date there has been widespread support for such legislation to be enacted. This has included positive support from Indigenous respondents. However, the state and territory consultations have also brought to light a range of views on what kinds of Indigenous rights should be protected through Human Rights Acts.

As foreshadowed in this chapter to date, there are three main areas to consider to ensure adequate protection of human rights for Indigenous peoples in a Human Rights Act,:

- i. recognition of Indigenous peoples in the preamble of a Human Rights Act;
- ii. the scope of general human rights protections in a Human Rights Act; and
- iii. additional specific recognition of Indigenous human rights in a Human Rights Act.

The critical distinction between the state and territory consultations to date and the national consultation underway currently is that the national consultation is the only one that has been conducted since the adoption of the *UN Declaration on the Rights of Indigenous Peoples* ('*Declaration*').

The significance of this is two-fold. First, as outlined in Part 2 of this chapter, the *Declaration* provides an internationally agreed-upon set of human rights standards for indigenous peoples, which Australia needs to now incorporate in our law. A Human Rights Act provides an effective means of enabling these rights to be recognised and enforced within Australia. An important means of achieving this would be to schedule the *Declaration* to a national Human Rights Act as a specific instrument that has to be taken into account in interpreting the provisions of a Human Rights Act.

Second, the *Declaration* outlines what human rights mean within indigenous contexts. This provides a valuable guide for informing how indigenous rights could be articulated in an Australian Human Rights Act.

## 4. Preambular recognition of Indigenous peoples in Human Rights Acts

The state and territory community consultations on a Human Rights Act to date demonstrate that there is widespread support for the recognition of Indigenous peoples in the preamble of a Human Rights Act. In the most recent consultation, the proposed wording provided by the WA Committee was:

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110 T Calma, *Indigenous Rights and the Debate over a Charter of Rights in Australia* (Speech delivered at the Human Rights Law Resource Centre's Annual Human Rights Dinner, Melbourne, 4 April 2008). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/20080404\\_charter.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080404_charter.html) (viewed 22 December 2008).

Human rights have a special importance for the Aboriginal people of Western Australia, as descendants of Australia's first peoples, with their diverse spiritual social, cultural and economic relationship with their traditional lands and waters.<sup>111</sup>

This wording is drawn from the preambles of both the ACT's *Human Rights Act* and the Victorian *Charter*. In the ACT the benefit of this recognition was deemed to be that 'this acknowledges that the equal protection of rights in the ACT community requires considering special needs of Indigenous people'.<sup>112</sup>

I note that Indigenous peoples have previously been recognised in the preambles of other federal legislation, most notably in the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth), the *Native Title Act (1993)* (Cth) and the *Aboriginal and Torres Strait Islander Act (2006)* (Cth). Extracts from these preambles are included in section 4 below.

Such recognition of Indigenous peoples in Commonwealth legislation affirms the existing formal recognition of Indigenous peoples by government within a human rights framework. Notably, both these preambles recognise that through the acceptance of the *Universal Declaration on Human Rights* and the ratification of the Covenants on civil and political rights and economic, social and cultural rights, the government is also acting to protect the rights of Indigenous peoples.

### 5. The scope of general human rights protections in a Human Rights Act

Indigenous peoples can certainly benefit from better protection of human rights that apply generally to all sectors of Australian society. The ACT Consultation Committee noted the value of generally expressed rights for Indigenous peoples as follows:

The case of *Kruger v The Commonwealth* shows how a particularly Indigenous experience – removal from the family motivated by assimilationist policies – can be explained in terms of rights that are not specifically labelled Indigenous [e.g. freedom of movement, the right to the freedom of religion, legal equality and due process].<sup>113</sup>

This can prevent misconceptions and controversies arising from Indigenous peoples being given special rights, and help to develop united support for a Human Rights Act.<sup>114</sup>

The challenge of relying upon rights that are generally applicable to everyone, and not specific to Indigenous peoples, is ensuring that the coverage of rights is sufficiently broad to encompass subject areas where Indigenous peoples practically experience rights violations on a daily basis.

There are two main subject areas where this is of particular significance for Indigenous peoples:

- Economic, social and cultural rights; and
- Rights to effective participation and self-determination.

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111 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) App G.

112 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) App 4, par 5.62.

113 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) App 4, par 5.53.

114 J Hartley, 'Indigenous Rights under the *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)' (2007) 11(3) *Australian Indigenous Law Review*, p 10.

## 5.1 Economic, social and cultural rights

While there has been widespread support for a Human Rights Act to recognise general rights such as economic rights, social rights and cultural rights, such recognition is yet to take occur.<sup>115</sup>

In Victoria, 41 percent of submissions wanted the Charter to also include economic, social and cultural rights such as the right to food, health, housing and education – even though the Statement of Intent issued for consultations specifically excluded economic, social and cultural rights from the scope of the consultations.<sup>116</sup>

In Western Australia 88 percent of respondents to the public opinion survey either ‘strongly supported’ or ‘supported’ human rights legislation protecting economic and social rights, while 77 percent of 162 participants surveyed during a consultation with the disadvantaged supported the inclusion of economic, social and cultural rights.<sup>117</sup>

Although economic and social rights would be recognised as general rights in a Human Rights Act, the high levels of disadvantage faced by Indigenous peoples in the areas of health, housing and education, means that such protection would be of particular value to Indigenous peoples:

the most urgent and pressing concerns of Indigenous peoples cluster around our economic, social and cultural rights; our rights to a decent standard of health, housing, water, education...[T]he rights which most Australians probably overlook because they can take them for granted. We do not have that privilege. Any framework that is currently being developed to protect rights will have to span all categories of rights.<sup>118</sup>

The WA Committee concluded that one of the reasons for supporting the inclusion of economic, social and cultural rights was that:

some of the biggest human rights issues in Western Australia relate to ESC rights, which are not enjoyed by a large number of people and in particular are often not enjoyed by the disadvantaged and marginalised in our society, such as ...Aboriginal people.<sup>119</sup>

Indigenous peoples would face specific benefits in being able to access remedies for violations of their economic and social rights. The ACT Committee concluded that the general rights to self-determination and economic, social and cultural rights are of particular significance to Indigenous peoples.<sup>120</sup>

A Human Rights Act that protects economic, social and cultural rights, as well as political and civil rights, would contribute positively to the much-needed recognition of Indigenous rights.

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115 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) p 95.

116 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 27.

117 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) p 64.

118 M Dodson 'The Unique Nature of the Australian Indigenous Experience' *Without Prejudice*, No 9 (June 1996) p 4.

119 Consultation Committee for a Proposed WA Human Rights Act, *A WA Human Rights Act*, WA Department of the Attorney General (2007) p 76.

120 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services (2003) App 4, par 5.62.

## 5.2 Right to self-determination

Another general right of relevance for Indigenous peoples is the right to self-determination. This right is a collective right of 'peoples'. Ordinarily, the peoples will be represented by the nation state and through ordinary democratic processes.

The *UN Declaration on the Rights of Indigenous Peoples*, however, affirms that the pre-existing systems of governance of Indigenous peoples qualifies us as entitled to such a collective status *within* the nation state of Australia.

The *Social Justice Report 2002* examined the history of the right to self-determination, its use in Australia and what specifically is meant by Indigenous self-determination.<sup>121</sup>

### Text Box 10: What is the right to self-determination?

The right to self-determination is a right for all peoples, and is recognised in common Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights:

1. All 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;
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence;
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The same right of self-determination is contained in Article 3 of the *UN Declaration on the Rights of Indigenous Peoples*:

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

By definition, the right to self-determination is '***an ongoing process of choice for the achievement of human security and fulfillment of human needs...***[that can take] the form of guarantees of cultural security, forms of self-governance and autonomy, economic self-reliance, effective participation at the international level, land rights and the ability to care for the natural environment, spiritual freedom and the various forms that ensure the free expression and protection of collective identity in dignity'.<sup>122</sup>

In articulating what the right to self-determination means in the context of indigenous peoples, Professor Erica-Irene Daes, a Former Chair of the United Nations Working Group on Indigenous Populations spoke of it in terms of:

121 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), ch 2.

122 UNESCO, 'Conclusions and recommendations of the conference' in M Walt van Praag (ed) *The implementation of the right to self-determination as a contribution to conflict prevention* (1999) p19.

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[s]elf-determination means **the freedom for indigenous peoples to live well**, to live according to their own values and beliefs, and to be respected by their non-indigenous neighbours... [Indigenous peoples'] goal has been achieving the freedom to live well and humanly – and to determine what it means to live humanly. In my view, no government has grounds for fearing that.<sup>123</sup>

Professor James Anaya, who was appointed the UN Special Rapporteur on Indigenous Peoples in 2008, has also identified five elements which constitute the right to self-determination in the context of indigenous peoples:

- non-discrimination,
- cultural integrity;
- lands and natural resources;
- social welfare and development; and
- self-government.<sup>124</sup>

The *Social Justice Report 2002* identified several factors essential to the realisation of the right to self-determination for indigenous peoples. Some of these included:

2. Respect for distinct cultural values and diversity is fundamental to the notion of self-determination.
3. The protection of self-determination unquestionably involves some kind of collective political identity for indigenous nations and peoples, i.e. it requires official recognition of their representatives and institutions.
4. Respect for Indigenous peoples' relationship to land and resources is an integral component of self-determination, from an economic, social, political and cultural dimension.
6. Essential to the exercise of self-determination is choice, participation and control. The essential requirement for self-determination is that the outcome corresponds to the free and voluntary choice of the people concerned.
9. A notion of popular participation is inherent to self-determination.
11. The existence in democratic societies of structural and procedural barriers which inhibit the full participation of indigenous peoples must be recognised. The nature of participation and representativeness required by self-determination necessitates going beyond such sameness of treatment and to strive for institutional innovation.<sup>125</sup>

What these definitions highlight is that the right to self-determination for indigenous peoples is about guaranteeing full, free and effective participation in all aspects of public life, particularly government decision-making.<sup>126</sup>

Accordingly, the essential requirement for self-determination is that it corresponds to the choice, participation and control of the people concerned<sup>127</sup> and what has been recognised in the *Declaration* as the principle of free, prior and informed consent.

Many governments, including the Australian government, have resisted recognising the right to self-determination. The key concerns have centred on the extent to which the right to self-determination can allow for secession or the creation of separate

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123 E Daes 'Striving for self-determination for Indigenous peoples' in Y Kly and D Kly (eds), *In pursuit of the right to self-determination* (2000), p 58.

124 S James Anaya, *Indigenous Peoples in International Law* (2004).

125 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), p 28–30.

126 S James Anaya, *Indigenous Peoples in International Law* (2004).

127 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), p 20.

Indigenous states.<sup>128</sup> As outlined in the *Social Justice Report 2006*, these concerns are not legally based.<sup>129</sup>

There are clearly recognised limits in international law on the rights to self-determination that prevent it from extending to issues of sovereignty or territorial integrity.

The *Social Justice Report 2002* cites examples such as the *Friendly Relations Declaration*, which states that the recognition of the right of all peoples to self-determination shall not 'be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States'.<sup>130</sup> Equally, *territorial integrity* is subject to *States meeting their responsibility to be representative and accountable in accordance with the right of self-determination*.

Article 46 of the *Declaration* serves to recognised Indigenous peoples' right to self-determination (Article 3) but qualify the right to self-determination in a way that guarantees the territorial integrity of States:

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

The right to self-determination is an important right to recognise in any Human Rights Act. The recognition of the right to self-determination underlies and supports the recognition of all other rights in a Human Rights Act. Through its inclusion in a Human Rights Act, the right to self-determination would also generate greater participation in decision-making processes, and create a space for dialogue between government and community. Where people have participated in the process they are often more supportive and dedicated to the outcomes, thus generating greater respect for representative democratic institutions and processes and greater social solidarity overall.<sup>131</sup>

For Indigenous peoples particularly, given the history of lack of consultation, lack of participation and lack of engagement in government policy making and program development to date, the recognition of the right to self-determination in a Human Rights Act would provide an important foundation that would promote Indigenous peoples' democratic inclusion and improved accountability.<sup>132</sup>

The Council for Aboriginal Reconciliation supported self-determination as the guiding principle for government policy in Indigenous affairs.<sup>133</sup> Incorporating the right to self-determination within a Human Rights Act provides a strong legislative basis for the right to self-determination informing government policy.

It was also recommended by the ACT Charter of Rights Consultative Committee that the right to self-determination be recognised as a general right in the ACT, while

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128 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2002), p 237.

129 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2002), p 238–242.

130 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), p 23.

131 M Castan and D Yarrow, Castan Centre for Human Rights Law, Memorandum to R Inglis, Victorian Aboriginal Legal Services, 1 February 2006.

132 M Castan and D Yarrow, Castan Centre for Human Rights Law, Memorandum to R Inglis, Victorian Aboriginal Legal Services, 1 February 2006.

133 Council for Aboriginal Reconciliation, *Recognising Aboriginal and Torres Strait Islander rights – Ways to implement the National Strategy to Recognise Aboriginal and Torres Strait Islander Rights*, (2000). At: [www.austlii.edu.au/au/other/IndigLRes/car/2000/9/](http://www.austlii.edu.au/au/other/IndigLRes/car/2000/9/) (viewed 31 January 2009).

recognising that it has specific meaning for Indigenous peoples. The Tasmanian Institute also supported the ACT's general approach to the right to self-determination, arguing that:

Despite the concerns of the Victorian Human Rights Consultation Committee, the Tasmanian Law Reform Institute agrees with the approach of the ACT Human Rights Consultative Committee and recommends that a right to self-determination be included in a Tasmanian Charter of Human Rights. This right should be of general application. Nevertheless, it will have particular significance and, therefore, particularly strong implications for Tasmanian Indigenous communities.<sup>134</sup>

In drafting the right to self-determination for a Human Rights Act, the *Declaration* should be used as the benchmark for articulating the right to self-determination in ways that are meaningful for Indigenous peoples.

## 6. Additional specific recognition of Indigenous human rights in a Human Rights Act

In 1996, the former Social Justice Commissioner, Michael Dodson, spoke on the protection of Indigenous rights through a Human Rights Act. He argued that a Human Rights Act in Australia would need to contain a combination of citizenship rights (or general rights), which are accorded to all in society as well as specific Indigenous rights, such as rights to land, to practise culture, preservation of languages and protection of traditional knowledge and biodiversity.<sup>135</sup> He stated:

It is because Indigenous rights encompass both categories [citizenship rights, and distinct Indigenous rights] that a comprehensive recognition of Indigenous rights requires a balancing act; holding in one hand the principle of equality or equity, and in the other the principle of difference.<sup>136</sup>

Of the possible specific rights recognised internationally, the Indigenous right to culture is the only right that has so far been recognised in a Human Rights Act in Australia, namely in the Victorian Charter (section 19). The Victorian Charter's section 19 is reflective of Article 27 of the International Covenant on Civil and Political Rights and similar provisions in the Convention on the Rights of the Child (Article 30) and the *UN Declaration on the Rights of Indigenous Peoples* (Article 25).

In the second reading speech for the Victorian Bill, the importance of this recognition was noted:

Recognising the special importance of the Aboriginal people as descendants of Australia's first people, the bill provides for indigenous people to maintain their kinship ties, and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources to which they have a connection under traditional laws and customs.<sup>137</sup>

By contrast in the ACT a right to culture is recognised in section 27 of the *Human Rights Act*, but without any specific reference to this being a specific right of Indigenous peoples. The result is the grouping of Indigenous rights within 'minority rights' rather than a recognition of the distinct rights of Indigenous peoples.

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134 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) par 4.16.47.

135 M Dodson 'The Unique Nature of the Australian Indigenous Experience' *Without Prejudice*, No 9 (June 1996) p 3–8.

136 M Dodson 'The Unique Nature of the Australian Indigenous Experience' *Without Prejudice*, No 9 (June 1996) p 5.

137 Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, p 13 (The Hon Robert Hulls MP, Attorney General).

The Tasmanian Institute supported the recognition of Indigenous peoples' specific right to culture. But they highlighted the need to distinguish between the cultural rights of the Indigenous community and those of other ethnic minorities and to give recognition to the distinct and special position of Indigenous Tasmanians.<sup>138</sup>

On the recognition of specific Indigenous rights in a Human Rights Act the Tasmanian Institute noted that:

without explicit provision being made in a Tasmanian Charter for the protection of the rights of Aboriginal Tasmanians, their participation, on an equal footing, in the rights enjoyed by the majority may not be realised. Protections that are often mentioned in this regard are of cultural heritage and language, the right to self-determination and the recognition and protection of Indigenous people's land rights.<sup>139</sup>

The UN Human Rights Committee has noted the necessity of positive legal measures of protection and measures to be put in place to protect this right and to ensure Indigenous peoples' effective participation in decisions that affect them.<sup>140</sup>

As the process of consultations occurs on a national Human Rights Act, it is vital to ensure that Indigenous peoples can articulate the type of specific protections they consider should be considered in such an Act, or whether they are satisfied that the general protections contained in the legislation are sufficient to protect their cultures and way of life.

I believe that at minimum, a national Human Rights Act should have the *UN Declaration on the Rights of Indigenous Peoples* scheduled to it as a relevant international instrument. That way, all of the general provisions of the Human Rights Act would be required to be interpreted consistently with the *Declaration* and the specific articulation of Indigenous peoples rights contained in the *Declaration*.

## 7. Ensuring Indigenous participation in the Human Rights Act consultations

The different state and territory consultations for a Human Rights Act have highlighted the barriers Indigenous peoples can face in engaging with such processes. Text Box 11 below outlines some of these challenges. Understanding these barriers can assist in ensuring future processes for the development of a Human Rights Act can maximise Indigenous peoples' engagement.

### Text Box 11: Challenges for Indigenous Peoples

#### 1. Engaging in community consultations for Human Rights Acts

Engagement must be structured to increase awareness among Indigenous peoples of what human rights are, as well as enable Indigenous peoples to identify what rights they want protected and how. At least two of the consultative processes to date have identified limitations of the process undertaken in this regard:

138 Dr Julie Debeljak, *Submission to the Tasmanian Law Reform Institute inquiry into a Charter of Rights for Tasmania*, cited in Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) par 4.16.54.

139 Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Tasmania Law Reform Institute, Report No. 10 (2007) p 131.

140 Human Rights Committee, *General Comment 23 – The Rights of Minorities (Article 27)* UN Doc CCPR/C/21/Rev.1/Add.5 (1994), par 7. At <http://www.unhcr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111?Opendocument> (viewed 19 January 2008).

- in the ACT the Consultative Committee acknowledged that the cultural protocols of consultation with Indigenous communities often require a longer consultation period than provided for;<sup>141</sup>
- in Victoria the Committee noted that some respondents had commented that there was insufficient community awareness about the consultation project. Some submissions were also critical of the time constraints placed on the consultation noting that six months was not long enough for the consultation. Other respondents noted that the priority on written submissions excluded particular disadvantaged people;<sup>142</sup>
- the Public Interest Law Clearing House made the point in the Victorian consultations that community education should be particularly directed towards those who are most vulnerable to rights abuses;<sup>143</sup>
- engagement with Indigenous peoples can be assisted by having Indigenous members of the consultative committee they can engage with. Only two of the four Consultative Committees had Indigenous members. In Victoria some submissions noted the lack of representation of Indigenous people on the Committee.<sup>144</sup> By contrast, the committee for the national consultations on human rights protections does include an Indigenous woman (Tammy Williams) as one of its four members.<sup>145</sup>

The development of the *UN Declaration on the Rights of Indigenous Peoples*, undertaken with the full participation of Indigenous peoples, provides a model of good practice that could be also followed for the development of a national Human Rights Act. Full and proper consultation with Indigenous peoples for a national Human Rights Act is particularly important given the historical exclusion of Indigenous peoples from the drafting of fundamental nationhood documents such as the *Constitution* and other federal legislation.

## *2. Insufficient recognition of rights relevant for Indigenous peoples*

As well as providing only limited recognition of specific Indigenous rights, none of the Human Rights Acts to date have recognised economic, social and cultural rights. Many Indigenous peoples experience breaches of their economic, social and cultural rights, most commonly due to our comparative disadvantage in areas such as housing, health and education.<sup>146</sup>

141 ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services, 2003, par 5.49. At <http://www.jcs.act.gov.au/prd/rights/reports.html> (viewed 22 December 2008).

142 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 143.

143 Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 96.

144 Public Interest Law Clearing House, *Submission to the Human Rights Consultation Committee's Consultation on Human Rights*, Submission 1043, cited in Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, Victorian Department of Justice (2005) p 143.

145 National Human Rights Consultation Website, *Who's Who*, [http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Who\\_Who](http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Who_Who) (viewed 31 January 2009).

146 The ACT Committee noted that 'almost all responses that were concerned with protecting Indigenous rights mentioned the need for equal access to ... health, education and housing': ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*, ACT Department of Urban Services, 2003, par 5.57.

*3. Lack of access to justice*

A lack of access to affordable and culturally appropriate information and legal representation continues to prevent Indigenous peoples from having equal access to justice. I believe this lack of access equally prevents Indigenous peoples' from engaging with Human Rights Acts.

Inadequate engagement with Indigenous peoples during community consultations and inadequate recognition of Indigenous rights in a Human Rights Act (in the preamble and as specific Indigenous rights) will see Human Rights Acts placed beyond the reach of Indigenous peoples.

## 8. Recommendations

***Recommendation 4***

That the Commonwealth Government commits to comprehensive support for engagement with Indigenous peoples in the consultation process for a national Human Rights Act.

***Recommendation 5***

That the Commonwealth Government adopt a Human Rights Act that is comprehensive in its scope and includes:

- recognition of Aboriginal and Torres Strait Islander peoples in the preamble;
- the right to self-determination;
- economic, social and cultural rights and civil and political rights;
- specific protections for Indigenous peoples where required; and
- the *UN Declaration on the Rights of Indigenous Peoples* scheduled as a relevant international instrument.

## Part 4: Constitutional reform

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The historical injustices that marked the framing of the *Constitution* affected many sectors of Australian society. Aboriginal and Torres Strait Islander peoples were completely excluded from the debates that preceded the drafting of the *Constitution* in the 1890s. Women were also entirely absent from the processes on which the modern state of Australia was founded.

Unsurprisingly, the drafters of Australia's *Constitution* saw no reason to place the rights of Indigenous peoples on the constitutional agenda. Not only did the founding documents of the new nation fail to adequately recognise Indigenous peoples' unique social and political place within the life of the nation, they also actively facilitated the means by which governments could exclude and discriminate against us.

The *Constitution* of Australia as enacted in 1900 contained two sections that explicitly discriminated against Indigenous peoples:

51. The Parliament shall, subject to this *Constitution*, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:-

(xxvi) The people of any race, **other than the aboriginal people in any State**, for whom it is necessary to make special laws.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives should not be counted.

And one section that discriminated on the basis of race:

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted. persons of any race are disqualified from voting at elections.<sup>147</sup>

This provision justified excluding Indigenous people from possessing voting rights – a situation that was not finally resolved until the 1960s in some parts of Australia.

Australia's framework of constitutional governance has remained largely unchanged since the time of Federation, particularly as it pertains to Indigenous peoples.

In part, this gap has been due to the structural difficulties in amending the *Constitution*, with section 128 requiring that a referendum must be passed by a majority of people in a majority of states, as well as by an overall national majority of the nation's population.

Since 1901, only eight constitutional amendments have succeeded at referenda, and only one of those, in 1967, was intended to improve the legal and political position of Aboriginal and Torres Strait Islander peoples.

Through the 1967 referendum, the *Constitution* was amended to remove the words '... other than the aboriginal people in any State...' from section 51(xxvi) and to entirely remove section 127.

This did not remove all the discriminatory provisions from the *Constitution*, as Section 25 still remains today. There have also not been any successful attempts to positively recognise Indigenous peoples in the *Constitution*.

The need for Constitutional reform to adequately protect Indigenous peoples rights and recognise the special place of Aboriginal and Torres Strait Islanders in our nation

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147 Commonwealth of Australia Constitution Act 1900 (Cth).

remains unfinished business. Calls for constitutional reform revolve around the following issues:

- Recognition of Indigenous peoples in the preamble to the *Constitution*;
- The removal of existing discriminatory provisions in the *Constitution*;
- Ensuring the ‘Races Power’ in section 51(xxvi) is used for beneficial purposes; and
- Removing the ability of the federal Parliament under the *Constitution* to introduce laws that discriminate or that authorise the states and territories to discriminate.

These issues are now on the table for discussion among the Australian community. The Australian Labor Party’s (ALP) National Platform commits a Labor Government to exploring options for constitutional reform. It includes the following commitments:

- **Para 5:** Labor recognises the fundamental rights and entitlements of Aboriginal and Torres Strait Islander Australians as the original owners of this land;
- **Para 49:** Labor will work towards a lasting settlement with Indigenous Australians. Labor will build public support to meet the goal of providing constitutional recognition of the First Nations status of Indigenous Australians and their custodianship of land and waters;
- **Para 97:** Labor recognises that a commitment was made to implement a package of social justice measures in response to the High Court’s Mabo decision. Labor will honour this commitment.<sup>148</sup>

The ALP National Platform also commits an ALP government to ‘implement the recommendations made in 2000 by the Council for Aboriginal Reconciliation’<sup>149</sup>. These recommendations are included in the text box below and also reflect the need for constitutional reform.

**Text Box 12: Council for Aboriginal Reconciliation’s recommendations for constitutional and legislative implementation**

1. Formal legal recognition of the status and rights of Aboriginal and Torres Strait Islander peoples (e.g. with the agreement of Indigenous peoples and governments, include statements recognising the status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia).
2. The design of a legislative framework for identifying and negotiating outstanding issues in the recognition of the rights of Aboriginal and Torres Strait Islander peoples (e.g. Government to consult with Indigenous communities to establish the basis for negotiation with governments and agree on representative structures through which they will undertake those negotiations; the Commonwealth Parliament legislate to establish a framework for negotiation and agreement on the unresolved issues of reconciliation).

148 Australian Labor Party, *ALP National Platform and Constitution* (2007) ch 13 (Respecting Human Rights and a Fair Go for All). At [http://www.alp.org.au/platform/chapter\\_13.php](http://www.alp.org.au/platform/chapter_13.php) (viewed 4 August 2008).

149 Australian Labor Party, *ALP National Platform and Constitution* (2007) ch 13 (Respecting Human Rights and a Fair Go for All) par 48. At [http://www.alp.org.au/platform/chapter\\_13.php](http://www.alp.org.au/platform/chapter_13.php) (viewed 4 August 2008).

3. Development of a legislated Bill of Rights (i.e. a Human Rights Act) that guarantees the rights of all Australian citizens and protects the rights of Aboriginal and Torres Strait Islander peoples (e.g. the process should include specific consideration of the rights of Aboriginal and Torres Strait Islander peoples and their protection in its Terms of Reference and provide for the involvement of Aboriginal and Torres Strait Islander peoples as witnesses and as specialist advisers).
4. Constitutional changes that provide protection against discrimination in the Australian Constitution.
  - A. The Commonwealth Parliament initiate and support a referendum to:
    - (i) provide a new preamble to the Constitution which, among other things, recognises Aboriginal and Torres Strait Islander peoples as the original owners and custodians, and acknowledges the history of dispossession that many have suffered since colonisation;
    - (ii) entrench the *Australian Declaration Towards Reconciliation*;
    - (iii) amend section 51(26) of the Constitution to authorise the Commonwealth to make special laws only for the benefit of any particular race; and
    - (iv) remove section 25 of the Constitution, and insert a new section making it unlawful to adversely discriminate on the grounds of race.
  - B. The Commonwealth government make every effort to obtain bi-partisan support and adequate and accurate community education programs to ensure that a referendum to change the Constitution takes place in a thoughtful and informed environment.

In considering the suitability of Constitutional reform we need to be mindful that:

- As it stands, the *Constitution* is an instrument that has traditionally excluded and discriminated against Indigenous peoples;
- Changing this situation is politically difficult (due to the difficulty of achieving change through referendums);
- There may be a mix of processes outside the *Constitution* that are more dynamic and easier to achieve that can recognise and protect Indigenous peoples' rights (such as through a national Human Rights Act, agreements at the Council of Australian Governments or other processes); and
- Any constitutional change would need to be carefully framed so that it actually leads to tangible outcomes for Indigenous peoples (particularly given the 1967 Referendum has resulted in an outcome entirely contrary to its purpose: namely, authorising the federal government to directly discriminate against Indigenous peoples if it so chooses).

Bearing these considerations in mind, my time as Aboriginal and Torres Strait Islander Social Justice Commissioner has reinforced my belief that constitutional change is an essential ingredient in providing adequate rights protection into the future.

It is not a panacea and will not address all of the outstanding human rights challenges that we face.

But it is critical and must not be set aside simply because it is complex and hard to achieve.

It is about ensuring that our founding document sets out ambitions and expectations for all Australians that reflect a modern, twenty first century Australia by providing a

legal foundation for reconciliation, where human rights are respected at all levels of government.

Without constitutional change, Aboriginal and Torres Strait Islander peoples will continue to be vulnerable to the enactment of racially discriminatory laws in Australia. No other reform to our legal system can address this fundamental problem.

## 1. Constitutional recognition of the unique rights and status of Indigenous peoples in the preamble

It is widely considered part of the ‘unfinished business’ of reconciliation to provide recognition of the first nations status of Indigenous peoples in the preamble to the *Constitution*. Such a change would be of great symbolic importance to Indigenous peoples. There is currently bipartisan support for this to occur.

The Council for Aboriginal Reconciliation has recommended that a new preamble should recognise Aboriginal and Torres Strait Islander peoples as the original owners and custodians, and acknowledge the history of dispossession that many have suffered since colonisation.<sup>150</sup> In making this recommendation, the Council stated that:

The full exercise and enjoyment of the human rights of the Aboriginal and Torres Strait Islander peoples is an essential foundation for reconciliation.<sup>151</sup>

On 23 July 2008, the Prime Minister was presented with the *Yolngu and Bininj Leader’s Statement of Intent* and a Declaration on the occasion of the convening of a federal government community Cabinet meeting at Yirrkala. The Declaration called upon the Prime Minister to:

Secure within the Australian Constitution the recognition and protection of our full and complete right to:

- Our way of life in all its diversity;
- Our property, being the lands and waters of east Arnhem land;
- Economic independence, through the proper use of the riches of our land and waters in all their abundance and wealth;
- Control of our lives and responsibility for our children’s future.<sup>152</sup>

Upon being presented with this statement, the Prime Minister stated

While our priority now remains, this practical challenge of closing the gap, we will also give attention to detailed, sensitive consultation with Indigenous communities about the most appropriate form and timing of constitutional recognition.<sup>153</sup>

The Prime Minister also noted in his Apology speech that he hoped that an area for a bipartisan policy approach would be securing a new preamble for the *Constitution* that recognises Indigenous peoples. This comment reflects the commitment of the

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150 A technical note: The Australian *Constitution* is contained within section 9 of an Imperial Act of the British Parliament, the *Commonwealth of Australia Constitution Act 1900*. This preamble may not be competently amended by an Australian referendum. Accordingly, a previous attempt to recognise Indigenous peoples in the preamble sought to insert an additional preamble for the Constitution that was intended to be inserted at the beginning of the section of the Act comprising the *Constitution*.

151 Council for Aboriginal Reconciliation, *Roadmap to Reconciliation* (2000). At [http://www.austlii.edu.au/au/orgs/car/recognising\\_rights/pg3.htm](http://www.austlii.edu.au/au/orgs/car/recognising_rights/pg3.htm) (viewed 2 December 2008).

152 The full text of the communiqué is available at: Crikey, *Communiqué: Yolngu and Bininj Leaders’ Statement of Intent*. At <http://www.crikey.com.au/Media/docs/COMMUNIQUE---Final-46d50e58-932f-4383-acc7-59f6a79f880c.pdf?source=cmailer> (viewed 26 November 2008).

153 ‘Rudd pledges Indigenous recognition in the *Constitution*’, ABC PM, 23 July 2008. At <http://www.abc.net.au/pm/content/2008/s2312531.htm> (viewed 2 December 2008); Prime Minister, ‘Joint Press Conference with the Chief Minister of the Northern Territory, Paul Henderson’ (transcript of media conference, 24 July 2008). At [http://www.pm.gov.au/media/Interview/2008/interview\\_0378.cfm](http://www.pm.gov.au/media/Interview/2008/interview_0378.cfm) (viewed 20 January 2009).

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former Coalition government that if re-elected, they would introduce legislation within 100 days of the election that would propose to recognise Aboriginal and Torres Strait Islander people in the preamble to the *Constitution*.<sup>154</sup>

In my view, amending the preamble to the *Constitution* would be of great symbolic importance, and go some way to redressing the historical exclusion of Indigenous peoples from Australia's foundational documents and national identity.

A new preamble to the *Constitution* may be used as a tool to aid judicial interpretation, or to resolve ambiguities in the text of the *Constitution* itself. However, a revised preamble recognising Indigenous peoples would not have direct legal effect or give rise to substantive rights or obligations.

For this reason, it is of the utmost importance that preambular recognition of Indigenous peoples in the *Constitution* is not pursued as an alternative to reforming substantive constitutional reform, including the insertion of an equality clause and a constitutional guarantee of non-discrimination.

At present, only the Victorian constitution positively recognises the unique position of Indigenous peoples:

### 1A. Recognition of Aboriginal people

(1) The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria.

(2) The Parliament recognises that Victoria's Aboriginal people, as the original custodians of the land on which the Colony of Victoria was established –

- (a) have a unique status as the descendants of Australia's first people; and
- (b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and
- (c) have made a unique and irreplaceable contribution to the identity and well-being of Victoria.

(3) The Parliament does not intend by this section–

- (a) to create in any person any legal right or give rise to any civil cause of action; or
- (b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.

On 5 December 2008 the Queensland Government also announced its intention to amend its state constitution to provide similar recognition for its Indigenous peoples.<sup>155</sup>

While by no means exhaustive, the preambles to the following pieces of federal legislation also provide useful guidance on the matters that might be included in a new Australian constitutional preamble:

- *Aboriginal and Torres Strait Islander Act 2005* (Cth); and
- *Native Title Act 1993* (Cth).

Text Box 13 below sets out the preambles to these pieces of legislation.

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154 J Howard, *To Stabilise and Protect: Little Children are Sacred* (Speech delivered at the Sydney Institute, Sydney, 11 October 2007).

155 'Activists Welcome Indigenous preamble for QLD *Constitution*', ABC Online, 5 December 2008. At <http://www.abc.net.au/news/stories/2008/12/05/2438520.htm> (viewed 11 December 2008).

**Text Box 13: Recognition of Indigenous peoples in Commonwealth legislation preambles**

*Aboriginal and Torres Strait Islander Act 2006 (Cth)*

Preamble

WHEREAS the people of Australia voted overwhelmingly to amend the *Constitution* so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race;

AND WHEREAS the people whose descendants are now known as Aboriginal persons and Torres Strait Islanders were the inhabitants of Australia before European settlement;

AND WHEREAS they have been progressively dispossessed of their lands and this dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal persons and Torres Strait Islanders concerning the use of their lands;

AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;

AND WHEREAS it is also the wish of the people of Australia that there be reached with Aboriginal persons and Torres Strait Islanders a real and lasting reconciliation of these matters;

AND WHEREAS it is the firm objective of the people of Australia that policies be maintained and developed by the Australian Government that will overcome disadvantages of Aboriginal persons and Torres Strait Islanders to facilitate the enjoyment of their culture;

AND WHEREAS it is appropriate to further the aforementioned objective in a manner that is consistent with the aims of self-management and self-sufficiency for Aboriginal persons and Torres Strait Islanders;

AND WHEREAS it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government;

AND WHEREAS the Parliament seeks to enable Aboriginal persons and Torres Strait Islanders to increase their economic status, promote their social well-being and improve the provision of community services;

AND WHEREAS the Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms...

*Native Title Act (1993) (Cth)*

Preamble:

The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement.

They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands.

As a consequence, Aboriginal peoples and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society.

The people of Australia voted overwhelmingly to amend the *Constitution* so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race.

The Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms...

The people of Australia intend:

- (a) to rectify the consequences of past injustices by the special measures contained in this Act, announced at the time of introduction of this Act into the Parliament, or agreed on by the Parliament from time to time, for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and
- (b) to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.....

It is also important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests and that a special fund needs to be established to assist them to acquire land.

The Parliament of Australia intends that the following law will take effect according to its terms and be a special law for the descendants of the original inhabitants of Australia.

There has been one previous attempt to insert a new preamble into the *Constitution*. This was in 1999 and came at a difficult stage in the reconciliation process.

The Council for Aboriginal Reconciliation had released its draft Declaration towards Reconciliation, but the Prime Minister had publicly stated that he did not support the substance of its recommendations.<sup>156</sup> The proposed preamble reflected the Prime Minister's position, which was a much more limited form of recognition than the Council and others had proposed.

It is understood that many people who would generally have supported a new preamble being inserted into the *Constitution* did not support the proposed wording and so voted "no". Although the reasons for that result are difficult to determine, a number of constitutional theorists have suggested that a lack of public ownership and consultation over the terms of the preamble,<sup>157</sup> rather than questions over the recognition of Indigenous peoples, was a decisive factor in its demise.

Any future efforts to amend the *Constitution*, and to redraft a proposed preamble recognising the unique rights and status of Indigenous peoples, must therefore have significant public input and ownership in order to have the best chance of success at a referendum.

156 J Gardiner-Garden, *From Dispossession to Reconciliation*, Australian Parliament House Parliamentary Library Research Paper 27 (1998–1999). At <http://www.aph.gov.au/library/Pubs/RP/1998-99/99rp27.htm#late90s> (viewed January 14, 2009).

157 See, for example, M McKenna, A Simpson and G Williams, 'With Hope in God, the Prime Minister and the Poet: Lessons from the 1999 Referendum on the Preamble' (2001) 24(1) *University of New South Wales Law Journal* p 401–419; A Winkel, 'A 21st century constitutional preamble: an opportunity for unity rather than partisan politics' (2001) 24(3) *University of New South Wales Law Journal* p 636–652.

Arriving at such a proposal will require both extensive consultation with Aboriginal and Torres Strait Islander peoples, as well as an extensive process of engagement with the broader Australian community.

We will need an extensive discussion in Australian society about national identity, belonging, and the place of Indigenous peoples in our society to ensure the broadest possible consensus for any proposed constitutional amendment to the preamble.

While constitutional change may be difficult to achieve, it is worth recalling that the most successful referendum ever was in 1967, a referendum that was intended to improve the position of Aboriginal and Torres Strait Islander peoples under Australia's constitutional arrangements.

I believe that the climate of goodwill that has been evident since the National Apology demonstrates that with bipartisan commitment, constitutional change would have a strong chance of success.

In order to ensure more lasting change, the Commonwealth government should also ensure that constitutional recognition of the unique status of Indigenous peoples is not limited to a textual amendment in the *Constitution*. A crucial component for the legitimacy of any future constitutional change should be the active engagement of Indigenous peoples in the reform process – particularly, in the development of any new process towards the achievement of an Australian republic.

The legitimacy of the process by which Indigenous peoples participate in public law reform processes may be as important as the legal results themselves. If dealt with properly, I believe that these processes could play a significant part in engendering a lasting relationship of understanding and trust between Indigenous peoples and government.

## 2. Secure protection for Aboriginal and Torres Strait Islander human rights

### 2.1 The removal of existing discriminatory provisions in the *Constitution*

A major concern of Indigenous peoples, that is shared by many non Indigenous Australians, (which has similar force on all racial groups) is the ability of the Commonwealth Parliament to:

- validly enact racially discriminatory laws under the powers vested in it by the *Constitution*; and
- authorise the states and territories to enact racially discriminatory laws.

As I have outlined above, I firmly support an Australian Human Rights Act that would require the government to explicitly consider human rights issues when developing and applying Commonwealth laws and policies.

However, it is of great concern to me that even the strongest Commonwealth legislative protection for human rights already in existence in Australia, has not proven capable of providing secure protection for Aboriginal and Torres Strait Islander peoples' rights. The following steps explain how this can occur:

- 1) **States and territories are bound by the protections of the *Racial Discrimination Act 1975* ('RDA') by virtue of the *Constitution*.** Through the operation of section 109 of the *Constitution*, state and territory laws will be invalid to the extent that they are inconsistent with a validly enacted law of the Commonwealth Parliament – such as the RDA.

**2) The Commonwealth Parliament can, however, authorise state and territory governments to introduce discriminatory laws against Indigenous peoples.** For example, the Commonwealth's Northern Territory Emergency Response legislation exempts the Queensland government from the operation of the RDA in the operations of the Family Responsibilities Commission. The Native Title Amendment Act of 1998 also authorised the states and territories to replace the 'right to negotiate' with a lesser 'right to be consulted' in particular circumstances – the states would not have been able to do this without the authorisation provided by the Commonwealth Parliament.

**3) Notably, if the state or territory levels of government initiated such discriminatory provisions themselves then those laws would be open to constitutional challenge.** For example, the Queensland Government's attempt to prevent Eddie Mabo from pursuing his claim of native title, by legislatively acquiring all native title rights for the Crown, was found to be invalid by reason of the incompatibility of the QLD legislation with the RDA;<sup>158</sup> as was the Western Australian government's attempt to extinguish all native title rights across the state in favour of lesser rights.<sup>159</sup>

**4) The Commonwealth can also directly discriminate against Indigenous peoples.** Since the RDA is an ordinary enactment of the Commonwealth Parliament, the principle of parliamentary sovereignty applies. As such, laws that are made at a later time will typically override anti-discrimination legislation to the extent of any explicitly intended inconsistency with the RDA. The Commonwealth Parliament can therefore legally discriminate against Indigenous peoples if it so chooses – so long as it evinces a specific intention to override the RDA through the passage of a constitutionally competent law.

#### **Text Box 14: Suspension of the *Racial Discrimination Act 1975* (Cth)**

The RDA was originally enacted to codify Australia's international obligations in accordance with the *International Convention on the Elimination of all forms of Racial Discrimination* ('CERD'). Under CERD, State parties undertake to promote non-discrimination on the grounds of race as a non-derogable standard within their jurisdictions.

However, the failure of the Commonwealth government to encode entrenched protections for non-discrimination beyond the level of an ordinary statute has led to the RDA being suspended in order to allow government to passing racially discriminatory laws on two occasions:

- In 1998 the Government's legislative amendments to the *Native Title Act 1993* provided that the RDA did not prevent the validation of 'past acts' or 'intermediate period acts' that impaired the native title rights and interests of Aboriginal and Torres Strait Islander peoples; and
- In 2007 the Northern Territory Emergency Response legislation excluded any acts done under the auspices of the legislation from the operation of the RDA. Although the National Board set up to review the Intervention recommended the re-instatement of the RDA and other State and Territory anti-discrimination legislation in October 2008, the suspension of the RDA in the Northern Territory currently remains in place.

158 *Mabo v Queensland (No 1)* (1988) 166 CLR 186.

159 *Western Australia v Commonwealth* (1995) 183 CLR 373.

This discrimination has occurred through the making of discriminatory laws under the 51(xxvi) of the *Constitution* (the ‘Races Power’) and section 122 of the *Constitution* (the ‘Territories Power’).<sup>160</sup>

In *Social Justice Report 2007*, I outline how the measures introduced under the Northern Territory Emergency response could have been formulated in a non-discriminatory manner, consistent with the RDA, through providing for proper consultation and engagement with Indigenous peoples and allowing for proper review processes. I explain that measures introduced to address family violence and child abuse, can be done in way that is consistent with human rights protections.<sup>161</sup>

## 2.2 How the *Constitution* currently permits racial discrimination

Following the 1967 referendum, Section 51(xxvi) of the *Constitution* provides that the Commonwealth Parliament can legislate for the peace, order and good government of the Commonwealth with respect to:

[t]he people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws.

While the success of the 1967 referendum and deletion of the words ‘other than the aboriginal people of any state’ gave the Commonwealth the power to make laws for Aboriginal people, the referendum did not confer a constitutional responsibility upon the Commonwealth to ensure that any laws it passed under the section would either benefit Indigenous peoples, or recognise their right to equal protection under the law.

While the question of whether section 51(xxvi) gives the Commonwealth the power to enact ‘detrimental’ laws for Aboriginal and Torres Strait Islander people is not considered fully settled.<sup>162</sup> The Hindmarsh Island Bridge case made it clear that the Parliament has the power to repeal its own laws made under the power that were intended to provide a ‘benefit’ to Aboriginal people,<sup>163</sup> and that such an action may clearly have a detrimental effect in practice. As the Chief Justice of the High Court has recently noted, the 1967 referendum has left the Races Power in need of further reform:

The intention of the amendment was entirely beneficial. That however did not turn the power generally into a beneficial one. The weight of High Court authority supports the view that s 51(xxvi) authorises both beneficial and adverse laws. It can properly be described as a constitutional chimera.<sup>164</sup>

160 Section 122 provides that ‘The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit’.

161 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission 7 (2008), ch 3.

162 In *Kartinyeri v Commonwealth* (1998) 195 CLR 337, Gaudron, Gummow and Hayne JJ left open the possibility that a ‘manifest abuse’ of the federal legislature’s use of the ‘races power’ under s 51(xxvi) of the *Constitution* may generate a justiciable constitutional question for the High Court.

163 *Kartinyeri v Commonwealth* (1998) 195 CLR 337 (Per Gaudron J at 369; Gummow and Hayne JJ at 380).

164 R S French, *Dolores Umbridge and the Concept of Policy as Legal Magic* (Speech given at the Australian Law Teachers’ Association National Conference, Perth, 24 September 2007).

As the dissenting judge in the Hindmarsh Island Bridge case, Kirby J found that it was open to the court to characterise the races power as only permitting 'benign' discrimination for the benefit of Indigenous peoples.<sup>165</sup>

It has been suggested that section 51(xxvi) of the *Constitution* should be amended to ensure that the Commonwealth can only make racially specific laws 'for the benefit' of the people of a particular race.

However, while such an approach may have led to a more preferable outcome in the Hindmarsh Bridge case itself, the question of what actions constitute a 'benefit' may, in fact, be a subjective and controversial question. In attempting to give legal content to this term, it is conceivable that a court could look to a number of different sources:

- That which the Commonwealth Parliament termed 'beneficial'; or
- That which the court considered 'beneficial' in the ordinary sense of the term.

It is not clear that either of these options would give strong protection to human rights. It is also not difficult to imagine a future situation where a government might pass particular legislation proclaiming that it was intended to improve the welfare and wellbeing of Indigenous peoples, even though the legislation was contrary to the consent of the peoples that would be affected.

It has also been suggested that an alternative way of addressing this issue would be to replace the existing Races Power with an 'equality before the law' clause in section 51 of the *Constitution*. However, such a clause may also prove problematic, given that:

- it may not bind every section of the *Constitution* (this issue is discussed further below); and
- a number of existing laws and programs (such as those relating to multiculturalism, migrant support services and Indigenous specific services) depend upon section 51(xxvi) for their validity. It is unclear whether any revised provision would still support all of these laws.

Accordingly, a focus on clarifying the scope of the Races Power will not resolve the existing deficiencies in the *Constitution*.

This is demonstrated through the example of the *Northern Territory National Emergency Response Act 2007* (Cth) ('NTER Act'):

- The NTER Act and related legislation suspend the operation of the RDA and remove protection against discriminatory actions;
- The NTER Act and related legislation also contain racially discriminatory provisions;
- These laws can rely on section 122 (the 'territories' power) of the *Constitution* for their validity;
- As a result, even if the Races Power could only be exercised for 'beneficial' purposes (and even if the interpretation of a 'benefit' as decided upon by a court coincided with the protection of human rights) the discriminatory aspects of the NTER Act provisions would still be constitutionally competent.

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165 *Kartinyeri v Commonwealth* (1998) 195 CLR 337, 411 (Kirby J).

### Text Box 15: The ‘Territories Power’

Section 122 of the *Constitution* provides:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

As I noted in the *Social Justice Report 2007*, the High Court has traditionally interpreted section 122 of the *Constitution* as providing the Commonwealth Government with unqualified scope to legislate in the Northern Territory, and in a manner that is unrestricted by other guarantees provided by section 51 of the *Constitution*.<sup>166</sup> The case of *Kruger v Commonwealth*<sup>167</sup> considered the constitutional validity of the policy of removing Indigenous children from their families in the Northern Territory. Brennan CJ and Dawson J explicitly found that:

- no constitutional requirement limited the power conferred on the federal government to legislate to remove Indigenous children from their families; and
- that neither express constitutional guarantees such as freedom of religion, nor implied terms such as freedom of movement and a general requirement of equality before the law, affected the unqualified scope of the Territories Power.<sup>168</sup>

Although the most recent case law suggests that the power of the Commonwealth government to legislate for the Northern Territory is unqualified, statements by the current government have exhibited an intention for governmental legislative power in the Northern Territory to be subject to other constitutional protections and limitations, such as the right to just terms compensation for the acquisition of property.<sup>169</sup>

In light of the land tenure reform measures adopted in the Northern Territory Intervention legislation, such a commitment is a welcome one. However, it is clear that Aboriginal and Torres Strait Islander people in the Northern Territory have an ongoing vulnerability to laws infringing upon their human rights, and that constitutional rights protection mechanisms should not be left to the benevolence of a particular government.

These provisions reveal the vulnerability of Indigenous peoples’ protection against discrimination in Australia. There are several examples of where racially discriminatory laws have been passed consistently with the *Constitution*. The prime issue, therefore, is how to ensure that the *Constitution* protects against racially discriminatory laws being enacted in the future.

The precedents set by the Commonwealth government’s suspension of the RDA demonstrates the inherent limitations of legislative protections for human rights in

166 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007) p 219. While it is true that recent cases heard by the High Court such as *Newcrest Mining v Commonwealth* (1997) 190 CLR 513 do leave scope for future interpretation regarding a more ‘integrationist’ view of the Territories Power, the jurisprudence can hardly be said to provide a firm basis on which constitutional protections are currently guaranteed.

167 (1997) 190 CLR 1.

168 (1997) 190 CLR 1 (Per Brennan CJ at 46; Dawson J at 73).

169 Minister for Families, Housing, Community Services and Indigenous Affairs ‘Response to the NTER Review’ (Transcript of media conference, 23 October 2008).

highly politicised situations, and in situations where the views and voices of affected minority groups are not adequately represented at the Commonwealth and state/territory levels.

As I have noted above, a focus on amending section 51(xxvi) may provide protection against discrimination that is incomplete and in some circumstances, ineffective. Accordingly, there is a need to ensure that any mechanism to protect people against discrimination applies to the provisions of the entire *Constitution*.

To address the issues discussed here, I propose that a more broadly based protection against discrimination and guarantee of equality before the law should form the basis of any constitutional reform. This would be in place of a focus on reforming the racial power of the *Constitution*.

### 2.3 A constitutional guarantee of equality before the law and freedom from discrimination

A constitutional guarantee of equality before the law and freedom from discrimination that is intended to bind the exercise of all Australian legislative, administrative and judicial powers could be drafted in order to provide comprehensive protection against racial discrimination.

Since the applicability of human rights standards should in no way depend on the vicissitudes of party politics, I believe that the time has come for the Commonwealth government to respond to the concerns of the Committee on the Elimination of all forms of Racism to entrench a guarantee against racial discrimination in its domestic law:

The Committee, while noting the explanations provided by the delegation, reiterates its concern about the absence of any entrenched guarantee against racial discrimination that would override the law of the Commonwealth (Convention, art. 2).

The Committee recommends to the State party that it work towards the inclusion of an entrenched guarantee against racial discrimination in its domestic law.<sup>170</sup>

Nearly all Commonwealth countries have entrenched equality and non-discrimination clauses in their Constitutions, including Canada, Fiji, India, Malaysia, New Zealand, Republic of South Africa and the United Kingdom. Although Australia has no constitutional tradition of rights protection, a well-established line of jurisprudence exists on the operative components of discrimination law at the domestic level, with considerable judicial comment and interpretation having been made with regard to the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*, over the past 30 years.

A constitutional guarantee of equality before the law and freedom from discrimination, was positively canvassed by the Council for Aboriginal Reconciliation<sup>171</sup> and in the *Social Justice Report 2000*.<sup>172</sup> This is an option for Australian constitutional reform that I believe warrants further consideration.

In June 2008, the House of Representatives Standing Committee on Legal and Constitutional Affairs convened a roundtable discussion to discuss, *inter alia*, how such an amendment might be effected.<sup>173</sup> A number of committee members at the

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170 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/AUS/CO/14 (2005).

171 Council for Aboriginal Reconciliation, *Roadmap to Reconciliation* (2000) available online at <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/10/pg3.htm> (accessed 2 December 2008).

172 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, Human Rights and Equal Opportunity Commission (2000) ch 4.

173 Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Reforming our Constitution: A roundtable discussion* (2008).

roundtable recommended that section 25 of the *Constitution* should be repealed and replaced with a non-discrimination clause.<sup>174</sup> In relation to voting procedures in the House of Representatives, section 25 of the *Constitution* currently provides that:

**25. Provision as to races disqualified from voting** For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

As the Council for Aboriginal Reconciliation have stated:

Section 25 of the *Constitution* is intended to discourage discrimination but recognises the possibility that a State might exclude people from voting on the grounds of race. Such a provision is inappropriate for any democratic nation, particularly one whose people come from many different backgrounds. As it stands, the Australian *Constitution* arguably contemplates that Australian citizens may be disenfranchised on racially discriminatory grounds. The Council strongly supports removing section 25 from the *Constitution* to ensure that no Australian can be denied the vote on the grounds of their race.<sup>175</sup>

Noting that section 25 contemplates the exclusion of voters on racial lines, the 1988 Constitutional Convention described section 25 as ‘odious’ and recommended that it be repealed.<sup>176</sup> The recommendation to repeal the section, which I support, was also favourably cited by the final report of the 2020 Summit, and by the Committee majority of the Standing Committee on Legal and Constitutional Affairs’ roundtable discussion.

In my view, the replacement of section 25 with guarantees of equality before the law and freedom from discrimination should be strongly considered as an option for constitutional reform in Australia.

This would be consistent with our international human rights obligations. The principle of non-discrimination on the grounds of race has attained the status of *jus cogens* under international customary law. In other words, non-discrimination is already a standard from which no deviation is permitted at either the national or international level. Constitutional entrenchment of equality and non-discrimination principles would be the most effective way of ensuring Australia meeting this obligation.

While the Australian *Constitution* is not generally viewed as a mechanism by which citizens can assert their rights against the Commonwealth government, the *Constitution* does operate in a number of areas as a restraint on the power of the government to legislate – such as the restraint on government legislation that would interfere with the express constitutional guarantees of freedom of religion and trial by jury for indictable offences.

It is also noteworthy that it is currently unclear to what extent implied guarantees of equality before the law,<sup>177</sup> or equal justice as a fundamental element of the judicial process,<sup>178</sup> are currently protected by the *Constitution*, with differing constitutional interpretations being preferred by various members of the High Court.

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174 Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Reforming our Constitution: A roundtable discussion* (2008) p 49.

175 Council for Aboriginal Reconciliation, *Recognising Aboriginal and Torres Strait Islander Rights – National Strategy of the Council for Aboriginal Reconciliation* (2000). At: [www.austlii.edu.au/au/other/IndigLRes/car/2000/9/](http://www.austlii.edu.au/au/other/IndigLRes/car/2000/9/) (viewed 11 December 2008).

176 *Constitution* Commission, *Final Report of the Constitutional Commission* (1988) p 16.

177 A substantive constitutional doctrine of the ‘inherent equality of all people’ was posited by Deane and Toohey JJ in *Leeth v Commonwealth* (1992) 174 CLR 455, 486, though such a doctrine should likely be regarded as having been rejected by the majority in *Kruger v Commonwealth* (1997) 190 CLR 1.

178 *Kruger v Commonwealth* (1997) 190 CLR 1, 68 (Gaudron J).

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A positive guarantee of equality before the law would clarify judicial disagreement in this area, and give strong protections to the rights that at least some High Court judges have stated should necessarily be regarded as impliedly protected by our *Constitution*.

Constitutional guarantees of equality before the law and freedom from discrimination would also prevent legislative protections against discrimination being overridden or suspended.

A national Human Rights Act may also provide the judiciary with an interpretive tool with which to support the application of the Races Power and the Territories Power in a manner consistent with human rights. However, in situations in which the Parliament has evinced an intention to override provisions of a Human Rights Act or discrimination laws more generally, entrenched constitutional guarantees of equality before the law and freedom from discrimination would provide more effective protection by preventing the operation of such legislation to the extent of its inconsistency with the amended *Constitution*.

In the past, legislative action has been justified by the principle of parliamentary supremacy, for which the rationale is ostensibly representative and responsible government. However, these examples demonstrated that in overriding rights on the basis of 'necessity', governments faced little political accountability – and in fact, in some cases, may have gained perceived political advantages – for their actions.

It is also my view that entrenching guarantees equality before the law and freedom from discrimination in the *Constitution* may also lead to outcomes that are more consistent with human rights in cases involving section 51(xxvi) of the *Constitution* (the 'Races Power') and section 122 of the *Constitution* (the 'Territories Power').

In my view, entrenched guarantees of equality before the law and freedom from discrimination would provide a far firmer legal basis for a human rights approach to constitutional interpretation in this area. Such a guarantee might also be expected to provide limitations on the 'Territories Power' in a manner that ensured that human rights were protected.

### 3. Recommendations

#### **Recommendation 6**

That the Commonwealth Government undertake national consultations and begin a constitutional process for the recognition of the special place of Aboriginal and Torres Strait Islander peoples in the preamble to the *Constitution*. Particular emphasis should be placed on the need for an inclusive, consultative process in drafting a revised preamble prior to a referendum.

#### **Recommendation 7**

That, in recognition that existing protections against racial discrimination have been overridden in relation to Indigenous peoples, the Commonwealth Government begin a constitutional process for the removal of section 25 of the *Constitution* and its replacement with a clause guaranteeing equality before the law and non-discrimination.

## Part 5: A National Indigenous Representative Body

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### 1. Background

Throughout my term as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have maintained that sustained progress in Indigenous policy making can only occur when there is a genuine partnership between government and Indigenous peoples and communities.

In my view, this partnership requires two elements. The first is the involvement of Indigenous peoples in the development of policies and programs that affect them. The second is a permanent mechanism to ensure that there is clear government accountability to Indigenous peoples for the progress that is being made.

Indigenous peoples and their representatives in Australia should be able to conduct open and transparent communications with all levels of government, in order to promote the protection of Indigenous human rights. Such a dialogue is essential in order for our democratic system to work effectively. The existence of representative mechanisms that can facilitate such dialogue and provide a voice to Indigenous peoples is also provided for in the *UN Declaration on the Rights of Indigenous Peoples*.<sup>179</sup>

The Objectives of the Second Decade of the World's Indigenous People also provide a template for governments' obligations in this regard. Specifically, states should

[p]romot[e] full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspects of their lives, considering the principle of free, prior and informed consent.

In the *Social Justice Report 2006* I argued that the Commonwealth government's 'new arrangements' in Indigenous affairs did not enable the effective participation of Indigenous peoples in decision making and in fact constitute the fundamental flaw of those arrangements. This is significant in terms of human rights compliance, but it is also a practical issue that goes to the workability and sustainability of service delivery and policy making processes. In the *Social Justice Report 2006* I recommended that:

the Ministerial Taskforce direct the Office of Indigenous Policy Coordination to address this deficiency [of engagement with Indigenous communities] as an urgent priority, including by:

- consulting with Indigenous communities and organisations as to suitable structures, including by considering those proposals submitted to the government for regional structures;
- utilising the Expert Panels and Multi-use List of community facilitators/ coordinators to prioritise consideration of this issue; and
- funding interim mechanisms to coordinate Indigenous input within regions and with a view to developing culturally appropriate models of engagement.<sup>180</sup>

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179 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295, UN Doc A/61/L.67 (2007) articles 4, 19.

180 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007) p 176.

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I also identified that in the period 2007–2008, I would follow up the issue by taking the following action:

The Social Justice Commissioner will work with Indigenous organisations and communities to identify sustainable options for establishing a national Indigenous representative body.<sup>181</sup>

## 2. New government, new approach?

Since the federal Labor government was elected in November 2007, the need for genuine partnership with Indigenous peoples has once again been spoken of as a priority. The government's commitment to partnership has also been matched with new policy approaches in a number of important areas.

As I detail in Chapter 5 of this *Social Justice Report*, one of the most notable advances has been the government's commitment to closing the gap in Indigenous health inequality. In line with the participatory goals of the Second Decade of the World's Indigenous Peoples, the Close the Gap Statement of Intent has committed the Commonwealth government to:

ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.<sup>182</sup>

But in other areas the gap between political rhetoric and practical change has been more troubling. In particular, the processes surrounding the development and implementation of the Northern Territory Intervention measures have left much to be desired, even under the current Commonwealth government.

While the appointment of a Board of Review for the Intervention was a welcome step, the government's initial response to the Board's report has demonstrated that consultation, even when it occurs, does not always go on to shape policy development in the way that it should. For example, the government has so far delayed the immediate re-instatement of state and Commonwealth anti-discrimination legislation,<sup>183</sup> in spite of the Board's clear recommendations to that effect.<sup>184</sup>

The key question with regard to representative structures is not how policy outcomes such as this can immediately be changed. Rather, the question is what steps should be taken to entrench proper accountability to Indigenous peoples for decision making, and to ensure that consultation processes are undertaken in good faith.

I believe that the Commonwealth government shares these aspirations. That is why over the past year, a number of steps have been taken, both by both my office and the Commonwealth government, to progress the establishment of a new National Indigenous Representative Body.

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181 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007) p v.

182 *Close the Gap Statement of Intent* (signed at the Indigenous Health Equality Summit, Canberra, 20 March 2008). At [www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 28 January 2009).

183 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Compulsory Income Management to continue as key NTER measure' (Media release, 23 October 2008). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nter\\_measure\\_23oct08.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nter_measure_23oct08.htm) (viewed 20 January 2009).

184 Northern Territory Emergency Response Board, *Report of the NTER Review Board* (2008) p 12. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/docs/Report\\_NTER\\_Review\\_October08.pdf](http://www.nterreview.gov.au/docs/report_nter_review/docs/Report_NTER_Review_October08.pdf) (viewed 30 January 2008).

### 3. Developing a representative body

In October 2007, my office sought expressions of interest for a research consultancy to research different mechanisms for representing Indigenous peoples in Australia and internationally. As the result of a competitive tender process, the National Centre for Indigenous Studies at the Australian National University was contracted to conduct the research.

The research informed a comprehensive issues paper released by my office in July 2008.<sup>185</sup> The issues paper examined three questions on Indigenous representation which were:

1. What lessons can be learned from mechanisms for representing Aboriginal and Torres Strait Islander peoples at the national, State/ territory or regional level that have previously existed or that are currently in place?
2. What lessons can be learned from mechanisms for representing Indigenous peoples that have been established in other countries?
3. What options are there for ensuring that a national Indigenous representative body is sustainable?

During this period, the Commonwealth government also began to take steps to advance the establishment of a representative body. In the budget portfolio statement for Indigenous Affairs released as part of the Commonwealth budget in May 2008, the Minister for Indigenous Affairs stated that:

The Government went to the election with a commitment to set up a national representative body to provide an Aboriginal and Torres Strait Islander voice within government. We will soon begin formal discussions with Indigenous people about the role, status and composition of this body.<sup>186</sup>

The government then announced consultations with Indigenous peoples on the key issues for a new national representative body. These consultations began in July 2008, and included 80 public meetings in each state and territory. The government also received over 100 public submissions to its consultations.

The consultations revealed that there was widespread consensus in the community about the need for a national representative body. However, it was also clear that there was considerable divergence on issues such as:

- what kind of body it should be;
- how it should be structured;
- what kind of membership it would have;
- what role should it have;
- how it would be funded ;
- what its relationship to government should be; and
- how it should be accountable to Indigenous peoples.

On 16 December 2008 the Minister for Indigenous Affairs, Jenny Macklin, announced that the second stage of consultations would be guided by Indigenous peoples. To further that process, the Minister invited me to convene an independent Indigenous Steering Committee to develop a model for a new national Indigenous representative body.

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185 Aboriginal and Torres Strait Islander Social Justice Commissioner, *A National Indigenous Representative Body*, Human Rights and Equal Opportunity Commission (2008). At [http://www.hreoc.gov.au/social\\_justice/repbody/index.html](http://www.hreoc.gov.au/social_justice/repbody/index.html) (viewed 30 January 2009).

186 Australian Government, *Budget 2008–2009* (2008). At [http://www.budget.gov.au/2008-09/content/ministerial\\_statements/html/indigenous-02.htm](http://www.budget.gov.au/2008-09/content/ministerial_statements/html/indigenous-02.htm) (viewed 30 January 2009).

### **Text Box 16: The Steering Committee for a National Indigenous Representative Body**

In December 2008, I invited a number of individuals to participate on the Steering Committee:

- Mr Mark Bin Bakar (WA);
- Ms Tanya Hosch (SA);
- Mr Geoff Scott (NSW);
- Dr Jackie Huggins AM; (Qld)
- Mr Tim Goodwin (Victoria and youth representative);
- Ms Yananymul Mununggurr (NT Top End homelands communities);
- Mr Jason Glanville (ACT);
- Ms Rosalie Kunoth-Monks (NT, Central Australia);
- Mr John Toshi Kris (Torres Strait Islands); and
- Ms Nala Mansell-McKenna (Tasmania and youth representative).

Professor Mick Dodson also agreed to participate in the Steering Committee in an advisory capacity.

Each person selected will take their place on the Committee in their individual capacity. Those chosen were picked for their experience and knowledge of national representative body mechanisms, as well as being selected to represent a balance of geographic representation, gender, age and youth members. Steering committee members are not, however, intended to represent the state or territory where they reside.

The Minister has mandated the Steering Committee to engage with and consult Aboriginal and Torres Strait Islander peoples across the country, in order to gain feedback on the Indigenous community's preferred model for a national Indigenous representative body. In doing so, the Steering Committee will also consider the outcomes of consultations conducted by the government to date.

The Steering Committee is also required to:

- convene an Indigenous peoples Workshop in March 2009, with a possible second workshop in June 2009;
- develop a preferred model for a new national Indigenous representative body for presentation to the Australian Government in July 2009;
- make recommendations in regards to the establishment of an interim body from July 2009 which would operate until the finalised body takes effect; and
- ensure strong community support for such a representative model.

Without proper engagement with Aboriginal and Torres Strait Islander peoples, governments will struggle in their efforts to make lasting progress in improving the conditions of Indigenous people and in our communities.

A national Indigenous representative body is a fundamental component of any future action if we are to achieve positive change.

At present, there is not a transparent, rigorous process for engaging with Indigenous peoples in determining the policy settings and to hold governments accountable for their performance.

The new Australian Government has acknowledged the importance of addressing this and of establishing a new partnership with Indigenous peoples.

It is now time for us to flesh out these commitments to ensure the full participation and input of Indigenous peoples into government decision making at the national level. And this, ultimately, is what the discussion about a new national Indigenous representative body is about.

It is about our place at the table in making the decisions that impact on our communities, on our men, our women and our children.

It is about creating a genuine partnership with government and across society:

- **With shared ambition**, so we are all working towards the same goals and not at cross purposes.
- **With mutual respect**, so we are part of the solutions to the needs of our communities instead of being treated solely as the problem.
- **With joint responsibility**, so that we can proceed with an honesty and an integrity where both governments and Indigenous people accept that we each have a role to play, and where we each accept our responsibilities to achieve the change needed to ensure that our children have an equal life chance to those of other Australians.
- **With respect for human rights**, that affirms our basic dignity as human beings and provides objective, transparent standards against which to measure our joint efforts.

We should resist the temptation to slip back into old habits. This is not about reviving ATSIC. The ATSIC Review of 2003 did not recommend the abolition of ATSIC but instead proposed a restructure and close adherence to a series of key principles. I am confident that Indigenous people will draw on the lessons from the ATSIC Review while also looking beyond the ATSIC model when setting out their hopes and expectations for a new national Indigenous representative body.

I consider that perhaps the greatest problem that ATSIC faced was that it was 'blamed' for the lack of progress in addressing Indigenous disadvantage, despite the simple fact that it had few responsibilities for service delivery that could contribute to achieving this goal. This was a key finding of the ATSIC Review in 2003.

I see significant benefits for a new National Indigenous Representative Body to not exercise the service delivery responsibilities of government. As for all other Australians, let government be responsible for delivering services to Indigenous citizens. We don't want to take the blame for second class treatment by government anymore.

Let the new Representative Body set the vision for our people's future, provide the guidance to achieving this and advocate for understanding for the consequences that flow from our status as the First Peoples of this nation.

A new National Indigenous Representative Body will also have to operate in a vastly changed environment from when ATSIC existed. This is one with:

- concrete commitments from government to closing the gap, with a partnership approach at the centre of this process;
- a renewed focus on reconciliation, following from the National Apology to the stolen generations;
- a whole of government system for delivering services to Indigenous people where the primary responsibility resides with mainstream government departments; and
- significant environmental challenges facing all Australians, and where the traditional knowledge, practices and land use of Indigenous peoples will have a significant role to play in preserving the quality of life of all Australians.

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A new National Indigenous Representative Body will also be created within the context of rapid advances internationally in the recognition of the rights of Indigenous peoples – developments which the new Australian government has indicated it supports and respects.

It is essential that as Indigenous peoples we have a seat at the table and are involved in the big debates that affect our communities. It is not credible to suggest that we should not have such involvement.

My hope is that we can, in partnership with government, develop a new national Indigenous representative body that engages with different sections of the pan-Aboriginal and/ or Torres Strait Islander community – be it women, men, our youth and children, communities in different geographical locations, traditional owners or stolen generations members.

And I hope that a representative body will operate in such a way as to inspire and support our people, while also holding governments accountable for their efforts, so we may ultimately enjoy equal life chances to all other Australians.

The first step on this road is mutual respect and a partnership. A national Indigenous representative body is an essential component of achieving the long overdue commitments to closing the gap.

### 4. Follow-up action by the Social Justice Commissioner

<b>Follow-up Action by the Social Justice Commissioner</b>
The Social Justice Commissioner will provide to the Minister for Families, Housing, Community Services and Indigenous Affairs advice on the proposed model for a new National Indigenous Representative Body in July 2009.

## Part 6: Unfinished business: A framework for negotiation

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This chapter so far has outlined some of the key components that are required to establish a comprehensive framework for formal protection of human rights – such as through constitutional reform and a Human Rights Act. The elements discussed so far are forward looking and seek to ensure adequate protection of Indigenous peoples into the future.

Such a framework will go a long way to preventing ongoing violations of Indigenous peoples' human rights. But it will not address two other critical issues:

- a framework to guide the relationship between governments and Indigenous peoples to set a benchmark for ongoing dialogue and negotiations; and
- an address to the ongoing consequences of the historical violation of Indigenous peoples' human rights.

It is one thing to acknowledge the existence of human rights abuses – as the Apology did so movingly – it is another to deal with the consequences and the inter-generational effects of such abuses and to ensure that structures are in place to ensure that such violations do not occur again.

For this reason, we also need to provide a mechanism through which to settle the outstanding consequences of past injustices and settle a negotiation framework for the future.

The *UN Declaration on the Rights of Indigenous Peoples* particularly emphasises the importance of processes to adjudicate disputes and for negotiations to take place between governments and Indigenous peoples. Relevant provisions include:

### *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

### *Article 19*

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 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### *Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

### *Article 40*

Indigenous peoples have the right to access and to prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

An important component of the human rights challenge for twenty first century Australia will be to establish a forum or framework through which genuine partnership can be negotiated between Indigenous peoples and the governments of Australia.

The need for a framework of negotiation stems back to the absence of a treaty between Indigenous peoples and the colonising governments. Other western democracies with Indigenous populations such as the United States of America, Canada and New Zealand, have all negotiated treaties with their indigenous peoples.

These treaty processes involve treaties struck at the time of colonisation but also modern, comprehensive settlement agreement processes that were begun in the past 30–40 years.

Comprehensive settlement processes provide the framework within which agreements between government and indigenous peoples are made in relation to land rights, governance, healing and other issues. The absence of a foundational framework for negotiation in Australia has impeded the development of similar agreements and institutions for the advancement of Indigenous peoples in Australia.

On 13 February 2008, in the National Apology to the Stolen Generations, the Prime Minister spoke of the need for a new partnership between Indigenous and non-Indigenous Australians based on respect. The Prime Minister spoke of successful government policies and of closing the gaps in inequality, as being the core planks of that partnership.

However, what was unspoken of was the absence of an agreed framework within which these policies can be negotiated and implemented. The unfinished business is the need to create this framework where Indigenous peoples and governments can sit at the table in good faith and with mutual respect to negotiate agreements.

Discussions for such a framework have been had before by both Indigenous peoples and governments.<sup>187</sup> Some of the more recent references to the need for a framework for negotiation have been made by the Council for Aboriginal Reconciliation. The Roadmap for Reconciliation includes the following recommendations:

#### **Constitutional and Legislative Implementation**

A. ATSIC and other Aboriginal and Torres Strait Islander representatives and representative organisations consult with communities to establish the basis for negotiation with governments and agree on representative structures through which they will undertake those negotiations. Provision of adequate resources is imperative to this process.

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<sup>187</sup> For an overview of discussions for a treaty from 1873 – 1998 see Council for Aboriginal Reconciliation, *Documents of Reconciliation Briefing Paper: Terra Nullius and Sovereignty*. At: <http://www.austlii.edu.au/au/orgs/car/docrec/policy/brief/terra.htm> (viewed 1 February 2009).

B. The Commonwealth government and Aboriginal and Torres Strait Islander representatives and representative organisations enter into discussions to establish a protocol for negotiation and the principles upon which the legislative framework will be based.

C. The Commonwealth government, in cooperation with Aboriginal and Torres Strait Islander representatives and representative organisations adopt the legislative framework proposed in this Document.

D. The Commonwealth Parliament legislate to establish a framework for negotiation and agreement on the unresolved issues of reconciliation.<sup>188</sup>

The Australian Labor Party, in its National Platform and Constitution (2007) has also committed to implementing these recommendations and implementing a social justice package. The platform states:

44. Promote the First Nations status of Indigenous Australians.  
Build national consensus around a long-term strategy to improve the social and economic well-being of Indigenous Australians.  
Enable the full exercise of Indigenous Australian's rights and responsibilities on both an individual and collective level.  
Advance reconciliation and social justice.
48. Implement the recommendations made in 2000 by the Council for Aboriginal Reconciliation and use the Council's Australian Declaration towards Reconciliation as a basis for action.
49. Work towards a lasting settlement with Indigenous Australians. Labor and build public support to meet the goal of providing constitutional recognition of the First Nations status of Indigenous Australians and their custodianship of land and waters.<sup>189</sup>

Perhaps most significantly, paragraph 97 of the ALP National Platform also states:

Labor recognises that a commitment was made to implement a package of social justice measures in response to the High Court's Mabo decision. Labor will honour this commitment.

The Social Justice Package was the third prong of the response to the Mabo decision after the establishment of the *Native Title Act 1993* (Cth) and the establishment of the Indigenous Land Fund.

Indigenous representatives consented to the package of measures in the *Native Title Act 1993* (Cth) – which included discriminatory provisions which confirmed extinguishment of native title – on the basis of there being a broader response to Indigenous social justice issues.

As a result, consultations were conducted by the Council for Aboriginal Reconciliation, ATSIC and the Social Justice Commissioner on the core elements of a social justice package to accompany the *Native Title Act 1993*. Three reports were produced by CAR, ATSIC and the Social Justice Commissioner proposing a framework for settlement in 1995.

Due to the change of Commonwealth government, these were never implemented.

It is timely for the ALP to revisit this issue.

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188 Council for Aboriginal Reconciliation, *Recognising Aboriginal and Torres Strait Islander Rights: Ways to implement the National Strategy to Recognise Aboriginal and Torres Strait Islander Rights, one of four National Strategies in the Roadmap for Reconciliation* (2000). At: <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/9/pg7.htm> (viewed 1 February 2009).

189 Australian Labour Party, *National Platform and Constitution*, (2007), Ch 13. At: [http://www.alp.org.au/platform/chapter\\_13.php#13aboriginal\\_peoples\\_and\\_torres\\_strait\\_islanders](http://www.alp.org.au/platform/chapter_13.php#13aboriginal_peoples_and_torres_strait_islanders) (viewed 31 January 2009).

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The failure of government to deliver the social justice package is highly significant. It reflects a lack of good faith on the part of government to deliver on elements of reform that it promised, in return for discriminatory provisions in the original Native Title Act. It goes to the bona fides of a Labor government to stand by commitments it has made solemnly to Indigenous peoples in the past.

Notably, the social justice package proposal of ATSIAC recommended that the starting point of a social justice package negotiation should be for governments to 'agree to and legislate a broad set of *Principles for Indigenous Social Justice and the Development of Relations between the Commonwealth Government and Aboriginal and Torres Strait Islander peoples*'.<sup>190</sup>

I endorse this proposal as a way forward to establish a framework to address the unfinished business in Australia.

The experiences in Canada, New Zealand and the United States show the value of an agreement framework in providing formal recognition to the unique rights and status of Indigenous peoples. Renewal of a national dialogue on this issue would greatly enhance the process of reconciliation between Indigenous and non-Indigenous Australians, and indicate to Indigenous peoples that the Australian nation recognised them with both honour and respect.

Further, it is my view that the establishment of an ongoing legal framework for agreements between governments and Indigenous peoples based on mutual partnership will fundamentally bolster the level at which self-determination can be exercised, and that more 'practical benefits' such as those associated with overcoming disadvantage, will result as a corresponding outcome over time.

Without determining the content of what such a mechanism might look like, I believe that such an approach may provide a more principled and certain framework to resolve issues of service delivery between Commonwealth, State and Territory governments: a key policy objective of the current Commonwealth government.<sup>191</sup>

Over time, it may be appropriate to also provide constitutional protection to agreements that have been struck through such a framework. Section 35 of the Canadian Constitution is a potential source of guidance in this area. It provides:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.<sup>192</sup>

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190 Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures* (1995). Reproduced in [1996] *Australian Indigenous Law Reporter* 27. At: <http://www.austlii.edu.au/au/journals/AILR/1996/27.html>.

191 Australian Labor Party, *ALP National Platform and Constitution* (2007) ch 13 (Respecting Human Rights and a Fair Go for All) pars 53–54. At [http://www.alp.org.au/platform/chapter\\_13.php](http://www.alp.org.au/platform/chapter_13.php) (viewed 4 August 2008).

192 *Constitution Act 1982*, being sch B to the *Canada Act 1982* (UK) cl 11, s 35.

## 1. Recommendations

### ***Recommendations 8 and 9***

That the Commonwealth Government commence negotiations of a framework for the negotiation of a social justice package to address the unfinished business of reconciliation.

Further, the new National Indigenous Representative Body, once established, be funded and tasked with consulting with Indigenous peoples and representing their interests in the negotiations of a social justice package. The social justice package should be finalised within 3 years of the establishment of the National Indigenous Representative Body.

## Part 7: Building a culture of human rights

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In addition to the formal protection mechanisms outlined above, the final significant step that should be considered by both government and the community sector in developing an Indigenous human rights framework is to build a culture of respect for human rights in Australia. This can be achieved through a substantial focus on human rights education.

The creation of a human rights culture refers to the presence of a context in which formal protections can operate to ensure that there is adequate recognition, awareness and application of human rights standards within parliament, government, the courts and the community.

To mark the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*, the United Nations has proclaimed the year beginning 10 December 2008 as the International Year of Human Rights Learning.<sup>193</sup> The importance of complementing a legal human rights-based approach with intellectual and cultural strategies to engender respect for universal human rights is also one of the primary goals of the World Program for Human Rights Education,<sup>194</sup> and is also a substantive component of many of Australia's international human rights obligations as they have been discussed in this chapter.

The question of human rights education has also been given significant attention by a number of treaty bodies and other international mechanisms, with the Human Rights Council's Ad Hoc Committee on the Elaboration of Complementary Standards to CERD recently recommending the development of:

a comprehensive binding instrument establishing the duty to promote non-discrimination, tolerance and equality of rights irrespective of race, ethnicity and other related grounds through human rights education...<sup>195</sup>

Central to the goal of creating a human rights culture in Australia will be undertaking measures that promote community understanding and acceptance of human rights for the entire Australian nation, as well as their particular importance in Indigenous communities.

Throughout my tenure as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have consistently argued that more extensive human rights education programs are needed in order to raise awareness of the existence and effect of human rights standards in the general community.

In the context of formal mechanisms for human rights protection, human rights education is particularly necessary to:

- inform the effective development of formal mechanisms for rights protection; and
- guarantee the effectiveness of formal rights protection mechanisms once they are operative.

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193 *International Year of Human Rights Learning*, GA Resolution 62/171, UN Doc A/Res/62/171 (2008).

194 *Revised draft plan of action for the first phase (2005–2007) of the World Programme for Human Rights Education*, UN Doc A/59/525/Rev.1 (2005).

195 Human Rights Council, *Complementary international standards* UN Doc A/HRC/AC.1/1/CRP.4 (2008), art 32.

## 1. Informing the development of formal mechanisms

The relationship between formal mechanisms for rights protection and human rights education is one of mutual reinforcement. On the one hand, processes initiated by governments to develop formal human rights mechanisms are themselves a useful tool for raising awareness of human rights standards and complementary responsibilities in the general community.

For example, the current national consultation on human rights protections in Australia may be expected to raise awareness of the level at which rights are currently protected in Australia, and allow the community to contribute to the development of a human rights culture in Australia.

On the other hand, the ability of various sectors of the community to engage in such discussions will be considerably limited without considerable capacity building and awareness-raising regarding the importance and applicability of human rights.

Education about human rights may also be necessary to counter the perception amongst some sectors of the community that they do not have the understanding or experience to contribute to a human rights dialogue, or that reform in the area should primarily be the concern of lawyers and academics.

Further, the notion that formal legal recognition of Indigenous rights is an abstract and academic concern was encouraged by the previous government's postulated tension between symbolic and substantive or 'practical' reconciliation,<sup>196</sup> and must be countered if genuine community-generated progress is to be achieved.

It is therefore of the utmost importance that formal rights protection mechanisms and strategies to promote human rights education are pursued simultaneously.

## 2. Guaranteeing effectiveness

One of the central goals of human rights education for Indigenous peoples should be to empower individuals and communities to assert control of their own lives. Human rights provide communities an external frame of reference for the legitimate expectations that they may have of dealings with government, businesses, and other community groups.

However, in the *Social Justice Report 2006* I identified that an 'information gap' exists in Australia that inhibits the use of a human rights framework by many Indigenous peoples and other civil society groups.

In particular, my experience as the Aboriginal and Torres Strait Islander Social Justice Commissioner has reinforced my belief that many Indigenous peoples continue to be unaware of the ways in which human rights relate to their lives.

Even where that understanding is present, many more lack the capacity and resources to usefully apply those standards to their advocacy and negotiations with government.<sup>197</sup> This belief has been confirmed in other reports including, the *Little Children are Sacred* report which found that 'many Aboriginal people remain powerless because they do not have access to information' and recommended that a range of community education projects be undertaken.<sup>198</sup>

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196 ANU National Centre for Indigenous Studies, *Building Sustainable Policy for Indigenous Affairs in Australia* (Executive summary report of the ANU Centre for Dialogue's Inaugural Event, Canberra, Saturday June 21 2008) p 7.

197 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2006) p 253.

198 P Anderson and R Wild, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007), p 157 and 160.

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Similar findings also came out of the NSW report – *Breaking the Silence*<sup>199</sup>, and from the research the Australian Human Rights Commission undertook from 2001–2006 which recommended:

4. Human rights education in indigenous communities. There is a need for broad-based education and awareness-raising among Indigenous communities to progress these issues. Working with communities to send strong messages that violence won't be tolerated, that there are legal obligations and protections, and that individuals have rights, are critical if we are to stamp out family violence.<sup>200</sup>

In this context, human rights education is necessary in order to operationalise formal human rights protections once they are enacted, and equip Indigenous peoples with the knowledge and skills to be able to advocate for improved standards of rights protection 'on the ground' in our communities.

A number of models already exist which may provide useful templates for human rights education programs across a range of different policy areas. The *Social Justice Report 2007* examined some of the positive Indigenous community education and community development initiatives undertaken in response to family violence and child abuse.

These examples demonstrated that community education and community development approaches, with a focus on human rights education, can play an important role in preventing violence. However, these examples also illustrated that their success was reliant on good partnerships between governments and communities, and ensuring that the education was community driven: recognising and responding to the Indigenous community's diverse needs and building on the community's knowledge and strengths.<sup>201</sup>

Throughout 2007–2008, my office and the Commonwealth Attorney-General's Department jointly co-ordinated a Community Legal Education module designed to train educators attached to Indigenous Family Violence Prevention Units around Australia. In my view, the model is an excellent example of the practice of human rights 'in action', as legal educators work with communities to send strong messages that violence won't be tolerated, that there are legal obligations and protections, and that individuals have legal and enforceable human rights.

### Text Box 17: Community Legal Education Training Program

The Community Legal Education Training Program is funded by the Commonwealth Attorney-General's Department to deliver an education module for Community Legal Education workers (CLEs) employed in Family Violence Prevention Legal Services. This initiative was intended to meet one of the aims of the *Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities* and the *COAG Communiqué of July 2006*.

The role of the CLE workers is to raise awareness amongst Indigenous peoples about the standards of Australian law that are relevant to family violence, and to clarify the relationship between Australian law and customary law.

199 NSW Aboriginal Child Sexual Assault Taskforce, *Breaking the silence: Creating the future*, Attorney General's Department NSW (2006).

200 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues* (2006). At: [http://humanrights.gov.au/social\\_justice/familyviolence/family\\_violence2006.html](http://humanrights.gov.au/social_justice/familyviolence/family_violence2006.html) (viewed 31 January 2009).

201 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007) p 23–26.

The aim of the training program was to provide CLE workers with appropriate skills and knowledge to fulfil their role. The training program was underpinned by community development theory and practice and the content of the training focused on Australian law and customary law as they are relevant to preventing violence in Indigenous communities.

13 CLE workers were trained in 2007, followed by an advanced training for some of these in 2008 and a second training in 2008 for new CLE workers engaged in 2008.

The evaluation of the program found the community education approach was very effective:

- The CLE workers reported a very high degree of satisfaction with the quality of the materials and the relevance of the content of the training program. In their evaluations, all CLE workers reported an increase in relevant knowledge and skills as a result of the training.
- The Secretariat of National Aboriginal and Islander Child Care (SNAICC) described the training program as a useful and necessary resource for workers engaged in the prevention of both child abuse and family violence.
- CLE workers strongly supported the need for follow-up training and development. They argued that they need opportunities to come together to problem solve, to share ideas and resources and to refresh and debrief from the arduous aspects of the role.

In partnership with the Diplomacy Training Program and Oxfam, my office will also jointly co-ordinate the development of an Indigenous Human Rights Network over the coming three years. Through the progressive development of web-based resources and regional workshops, the network will facilitate information-sharing between Indigenous human rights advocates across Australia about developments in Indigenous rights at the national and international level. Through education and collaboration, it is my hope that over time human rights education will be disseminated to Indigenous communities across through the leadership of their own advocates.

There remains a pressing need for broader based education and awareness-raising in both Indigenous and non-Indigenous communities across Australia to ensure that Indigenous interests and rights are protected.

In my view, this could be achieved through a combination of a number of different measures. Governments, the private sector, civil society and international organizations and aid agencies need to support Indigenous organisations to undertake their own capacity building around rights advocacy in the light of the particular circumstances of individual communities that they service.

As I noted in the *Social Justice Report 2006*, there is also still much to be gained through partnerships between organisations that deal with questions of human rights as part of their daily business, whether those be Indigenous organisations, research institutes and universities, Indigenous legal and medical services and the broader non-government sector.<sup>202</sup>

Finally, there is a need to build the capacity of politicians, government officials, the private sector and other non-governmental actors to understand and apply human rights standards to ensure the practical realisation of human rights.

Importantly, this includes increasing their knowledge of Indigenous human rights in order that that can effectively engage with Indigenous communities. Intensive training

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202 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2006) p 254.

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and awareness raising on the rights of Indigenous peoples should be provided throughout Australia, and concerted efforts should be made to recruit and then support Indigenous people working in human rights positions in government, private and non-government sector employment.

### 3. Recommendations

***Recommendation 10***

That the Commonwealth Government resource the Australian Human Rights Commission to develop and implement a comprehensive community development and community education programs on human rights for Aboriginal and Torres Strait Islander peoples.

## Part 8: Conclusions and recommendations

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This chapter has set out an agenda for the protection of the rights of Indigenous peoples in Australia for the 21<sup>st</sup> century. It contains a mix of mechanisms to ensure sufficient legal safeguards (including at the constitutional level); recognition of the place of Indigenous peoples in the Australian story; participatory processes and frameworks to negotiate unfinished business; and a substantial focus on human rights education to ensure that human rights are fully understood among our communities.

This is an ambitious set of proposals that are complementary and address different elements of the existing deficiencies in our legal and cultural system.

Ultimately my goal is to ensure that human rights are for everyone, everywhere, everyday.

### Summary of Recommendations

#### **Recommendation 1**

That the Commonwealth Government make a statement of support in the UN General Assembly and UN Human Rights Council for the *UN Declaration on the Rights of Indigenous Peoples* as a matter of priority.

#### **Recommendation 2**

That the Commonwealth Attorney General schedule the *UN Declaration on the Rights of Indigenous Peoples* to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

#### **Recommendation 3**

That the Joint Standing Committee on Treaties conduct consultations, including with Indigenous peoples, on the desirability of ratifying *ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*.

#### **Recommendation 4**

That the Commonwealth Government commits to comprehensive support for engagement with Indigenous peoples in the consultation process for a National Human Rights Act.

#### **Recommendation 5**

That the Commonwealth Government adopt a Human Rights Act that is comprehensive in its scope and includes:

- recognition of Aboriginal and Torres Strait Islander peoples in the preamble;
- the right to self-determination;
- economic, social and cultural rights and civil and political rights;

- specific protections for Indigenous peoples where required; and
- the *UN Declaration on the Rights of Indigenous Peoples* scheduled as a relevant international instrument

### ***Recommendation 6***

That the Commonwealth Government undertake national consultations and begin a constitutional process for the recognition of the special place of Aboriginal and Torres Strait Islander peoples in the preamble to the *Constitution*. Particular emphasis should be placed on the need for an inclusive, consultative process in drafting a revised preamble prior to a referendum.

### ***Recommendation 7***

That, in recognition that existing protections against racial discrimination have been overridden in relation to Indigenous peoples, the Commonwealth Government begin a constitutional process for the removal of section 25 of the *Constitution* and its replacement with a clause guaranteeing equality before the law and non-discrimination.

### ***Recommendations 8 and 9***

That the Commonwealth Government commence negotiations of a framework for the negotiation of a social justice package to address the unfinished business of reconciliation.

Further, the new National Indigenous Representative Body, once established, be funded and tasked with consulting with Indigenous peoples and representing their interests in the negotiations of a social justice package. The social justice package should be finalised within 3 years of the establishment of the National Indigenous Representative Body.

### ***Recommendation 10***

That the Commonwealth Government resource the Australian Human Rights Commission to develop and implement a comprehensive community development and community education programs on human rights for Aboriginal and Torres Strait Islander peoples.

### ***Follow-up Action by the Social Justice Commissioner***

The Social Justice Commissioner will provide to the Minister for Families, Housing, Community Services and Indigenous Affairs advice on the proposed model for a new National Indigenous Representative Body in July 2009.

# Chapter 3

## Remote Indigenous education

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### Part 1: Introduction

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...education is the engine room of prosperity and helps create a fairer, more productive society. It is the most effective way we know, to build prosperity and spread opportunity...<sup>1</sup>

In recent decades, academics, policy makers and education experts have debated the pros and cons of various education approaches aimed at improving educational outcomes for Aboriginal and Torres Strait Islander peoples (or indigenous peoples). For the most part, the debates have focussed on Indigenous education in remote Australia. This is where Indigenous students make up the majority of the school populations, and the schools they attend are not considered, (and often not funded) in the same way as 'mainstream' schools. The Indigenous students in these remote schools often experience significant educational disadvantage, and as a consequence, their English literacy and numeracy skills are at lower levels than other Australian students.

With few exceptions, the debates about Indigenous education focus on whether it is better to educate Indigenous children in their own communities or whether it is better to remove Indigenous children to boarding schools where they can access western style education and be saturated in the English language. The debates contest strategies that, on the one hand, seek to 'normalise' Indigenous students through assimilation and integration with mainstream society, and on the other, seek to preserve Indigenous languages and culture within Indigenous communities. The proponents of both sides of the argument are keen for the same outcomes – the best possible education and the best possible life opportunities for remote students.

During 2007 and 2008 the Australian media reflected these polarising themes. We saw articles on subjects such as: 'boarding school education versus education in the home community'; 'bilingual education versus English literacy saturation'; 'education partnerships with Indigenous communities versus education dictated by the mainstream'; and the 'regionalisation of education resources versus education in the homelands.'<sup>2</sup>

It is my contention that these debates are a distraction from the fundamental requirements for good Indigenous education policy and services. The focus on education approaches is a distraction from a simple truth; that there

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1 Canberra, *Tax Laws Amendment (Education Refund) Bill 2008*, Second Reading Speech, 25 September 2008 (The Hon Wayne Swan MP, Treasurer).

2 Reconciliation Australia, *Week in Review – ending 4 April 2008*. At <http://www.reconciliation.org.au/i-cms.isp?page=679> (viewed 28 January 2009).

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are some very large gaps in the provision of education services in remote Australia. Debates about approaches draw attention away from the fact that many remote Indigenous students receive a part-time education in sub-standard school facilities – if they receive a service at all.

If students across the country are assessed using the same tests and deemed to be educationally competent or otherwise using the same measures, then governments must provide consistent levels of education resources across the country. It is not possible, practical or desirable to move all remote students into urban centres, so quality education must move to them. Governments must also prepare for ongoing growth in Indigenous populations. For example, it is estimated that the total population of the Northern Territory will increase by 87 percent by 2056.<sup>3</sup> Across Australia the 2006 census tells us that the median age of the Indigenous population was 21 years, compared to 37 years for the non-Indigenous population.<sup>4</sup> In all we are a young and growing demographic.

It is time for governments to assess the availability of education services in remote Australia and ensure that quality education is available when populations warrant them. This is the right of all Australian children, and in a country as wealthy as ours, remote Indigenous students should receive no less.

The human right to education is characterised by four features. Education must be available, accessible, acceptable and adaptable.<sup>5</sup>

National Benchmark test results show a significant gap in the educational performance of remote Indigenous students compared with students in all other locations.<sup>6</sup> These results have not changed over time. In fact, there have been negligible improvements in English literacy and numeracy outcomes along with a simultaneous erosion of Indigenous languages and culture.

This chapter will not reproduce statistics that point to student failure, nor will it debate pedagogical approaches. My aim is to shine the spotlight on the systems that provide and deliver education services. The issue I am interested in interrogating here, is whether governments have fulfilled their obligation to provide quality education services in remote Australia.

The Australian Government has indicated its willingness to improve the life chances of Indigenous Australians through education. The *Apology* to the Stolen Generations in 2008 contained strong commitments to early childhood education.<sup>7</sup> The *Close the Gap Statement of Intent* committed the Government to work with Indigenous people to achieve equality in health status and life expectancy, comparable with non-Indigenous

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3 Australian Bureau of Statistics, *3222.0 – Population Projections, Australia, 2006 to 2101*, At <http://www.abs.gov.au/Ausstats/abs@.nsf/mf/3222.0> (viewed 29 January 2009).

4 Australian Bureau of Statistics, *3238.0.55.001 – Experimental Estimates of Aboriginal and Torres Strait Islander Australians, Jun 2006*, At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3238.0.55.001Main%20Features1Jun%202006?opendocument&tabname=Summary&prodno=3238.0.55.001&issue=Jun%202006&num=&view=> (viewed 29 January 2009).

5 Committee on Economic, Social and Cultural Rights, *General Comment No. 13 – the Right to Education*, UN Doc E/C.12/1999/10 (1999), paragraph 6–7.

6 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007 Report* (2007), Section 6. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2007/keyindicators2007.pdf> (viewed 14 January 2009).

7 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, (The Hon Kevin Rudd MP, Prime Minister) at [http://www.aph.gov.au/house/Rudd\\_Speech.pdf](http://www.aph.gov.au/house/Rudd_Speech.pdf) (viewed 13 January 2009).

Australians by 2030.<sup>8</sup> The Prime Minister recognises the importance of education in achieving equal life chances. In the *Apology* he stated:

Our challenge for the future is to embrace a new partnership between Indigenous and non-Indigenous Australians. The core of this partnership for the future is closing the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities.<sup>9</sup>

I acknowledge that in population terms, the majority of Australian Indigenous students are in urban and regional locations. I have chosen to dedicate this chapter to discussion of remote Indigenous education because this is where the greatest educational challenges exist. It is where we see the greatest disadvantage and it is where we see the poorest educational outcomes.

This chapter contains specific measures focussed on the considerable challenges of providing preschool, primary school and secondary school education in remote Australia. It provides examples of initiatives which demonstrate good practice and it concludes with recommendations for government action. The chapter is structured in seven parts:

1. Introduction
2. Setting the scene – the challenge of delivering a quality educational service in remote Australia
3. School and community partnerships
4. The best and brightest teachers and leaders
5. Early childhood education
6. Education as the key to other life chances
7. Conclusion and recommendations.

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8 Representative of the Australian Government, National Aboriginal Community Controlled Health Organisation, Congress of Aboriginal and Torres Strait Islander Nurses, Australian Indigenous Doctors Association, Indigenous Dentists Association of Australia, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Close the Gap, Indigenous Health Equality Summit Statement of Intent, Canberra, March 20, 2008. At [http://www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html), (viewed 28 January 2009)

9 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, (The Hon Kevin Rudd MP, Prime Minister) at [http://www.aph.gov.au/house/Rudd\\_Speech.pdf](http://www.aph.gov.au/house/Rudd_Speech.pdf) (viewed 13 January 2009).

## Part 2: Setting the scene – the challenge of delivering a quality educational service in remote Australia

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### 1. Remote Australia

The vast majority of the Australian continent is sparsely inhabited. In 2006 there were 1,187 discrete Indigenous communities in Australia with 1,008 of these communities in very remote areas. Of the very remote communities, 767 had population sizes of less than 50 persons. In 2006 there were 69,253 Indigenous people living in very remote Australia.<sup>10</sup>

31 percent of Indigenous Australians live in major cities and 24 percent live in remote and very remote Australia.<sup>11</sup> The remainder of the Indigenous population lives in regional centres. In contrast, non-Indigenous Australians are much more likely to live in major cities with less than 2 percent living in remote and very remote areas.<sup>12</sup> The Accessibility/Remoteness Index of Australia describes remote and very remote locations as having very little accessibility of goods, services and opportunities for social interaction.<sup>13</sup> For ease of expression from hereon, I will use the term 'remote' to include both remote and very remote regions.

Remoteness has obvious implications for school education, limiting access to educational services as well as other resources such as libraries and information technology. Road access may be limited during times of the year and during wet season periods there may be no access for months on end. If internet access is available in remote Australia, it is usually via satellite, offering a dial-up service with limited and slow internet speeds.

Map 1 shows the distribution of population across Australia varying from Major Cities through to Very Remote Australia. Map 2 shows the distribution of Australia's total population across Australia with each dot representing 1,000 people and Map 3 shows the distribution of the Indigenous population across Australia with each dot representing 100 people. Table 1 shows the population of Indigenous and non-Indigenous people by remoteness category.

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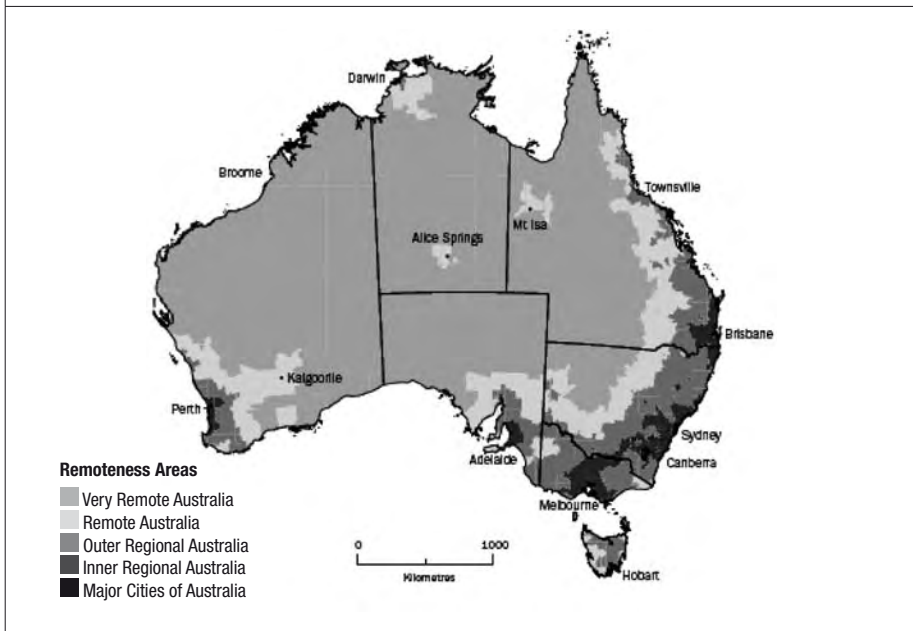
10 A Fordham, R Schwab, *Summarising: Fordham, Preliminary analyses of access to education and discrete Indigenous communities in Australia, Reference No. 48*, Centre for Aboriginal Economic Policy Research (2006). At <http://www.anu.edu.au/caepr/educationfutures/ref048.pdf> (viewed 18 September 2008). Data Source: ABS 2006 Community Housing and Infrastructure Needs Survey (CHINS) of Aboriginal and Torres Strait Islander communities

11 Australian Bureau of Statistics, *4705.0 – Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4705.0Main+Features12006?OpenDocument> (viewed 19 January 2009).

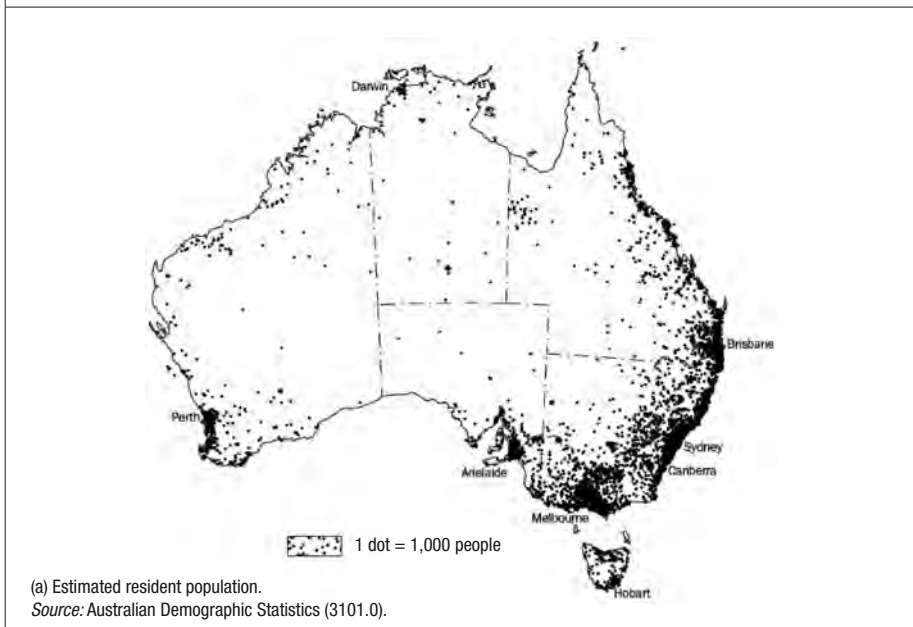
12 Australian Bureau of Statistics, *4705.0 – Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*, Commonwealth of Australia, Canberra. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4705.0Main+Features12006?OpenDocument> (viewed 19 January 2009).

13 Measuring Remoteness: Accessibility/Remoteness Index of Australia (ARIA), Revised Edition, Occasional Papers: New Series Number 14, (2001), p. 19 At [http://www.health.gov.au/internet/main/publishing.nsf/Content/7B1A5FA525DD0D39CA25748200048131/\\$File/ocpanew14.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/7B1A5FA525DD0D39CA25748200048131/$File/ocpanew14.pdf) (viewed 21 September 2008).

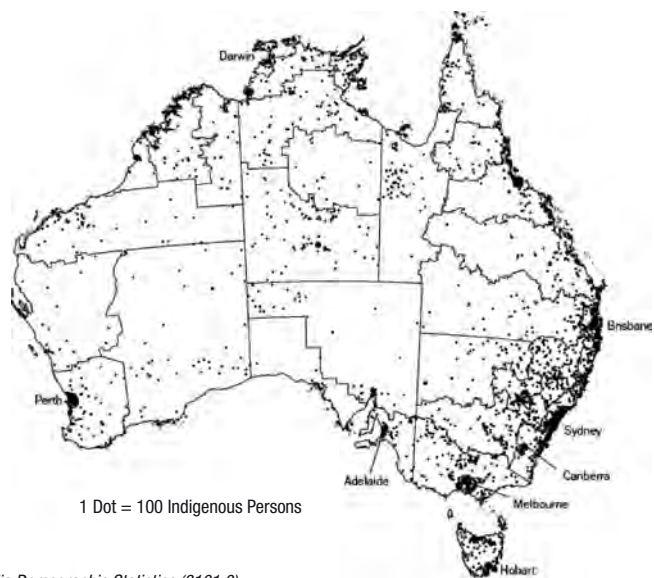
**Map 1: Remoteness categories of the Australian continent – June 2006, 1301.0 – Year Book Australia, 2008, Australian Bureau of Statistics**



**Map 2: Australian population distribution – June 2006, 1301.0 – Year Book Australia, 2008, Australian Bureau of Statistics**



**Map 3: Indigenous population distribution – June 2006, 1301.0 – Year Book Australia, 2008, Australian Bureau of Statistics**



Source: Australia Demographic Statistics (3101.0).

**Table 1: Estimate of Indigenous and non-Indigenous population in Regions according to 2006 Census data<sup>14</sup>**

Region	Pop.	Est. non-Indigenous pop.	Est. Indigenous pop.
Major cities of Australia		13,996,450	165,804
Inner Regional Australia		3,975,154	110,643
Outer Regional Australia		1,854,026	113,280
Remote Australia		267,199	47,852
Very Remote Australia		88,008	79,464
<b>Total</b>		<b>20,180,837</b>	<b>517,043</b>

<sup>14</sup> Australian Bureau of Statistics, 3238.0.55.001 – *Experimental Estimates of Aboriginal and Torres Strait Islander Australians, Jun 2006*, Commonwealth of Australia, Canberra. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3238.0.55.001Jun%202006?OpenDocument> (viewed 19 January 2009).

## 2. Are education services available and accessible in remote Australia?

We don't have accurate information to assess whether remote Indigenous students have access to education in their region. There is no data which matches populations of school-aged students against preschool, primary and secondary school services in Australia. This lack of data is a serious omission. It is essential information for government's to plan their expenditure in education. This kind of data tells us whether Australia is meeting its obligations under the *Convention of the Rights of the Child* to:

... recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need:<sup>15</sup>

In 1999 the Human Rights and Equal Opportunity Commission conducted an Inquiry into rural and remote education. The Inquiry found that there were over 950 young people of secondary school age in East Arnhem Land without access to secondary education.<sup>16</sup> While some work has been done to provide limited secondary options in East Arnhem Land since 1999, we simply don't have accurate data telling us who is missing out. We don't know how many remote Indigenous students are being educated in makeshift facilities with part-time visiting teachers. We don't know how many students live in communities across Australia with no electricity and no educational facility.

Australia has not been a big spender on educational institutions compared with other countries. In its 2007 publication, *Education at a Glance 2007* the Organisation for Economic Co-operation and Development (OECD) identified that Australia has proportionally lower spending on education as a percentage of GDP compared with New Zealand, Iceland, South Korea, Chile, and a number of European countries.<sup>17</sup>

There is work ahead for governments to chart the populations of actual and projected school-aged children by Australian statistical subdivision, and match these populations to school and preschool infrastructure. The relative underspending of Australian governments on education is likely to have had impacts in remote Australia. Without data, we cannot assess these impacts.

## 3. Are Indigenous students in remote Australia receiving quality education?

Article 29 of the *Convention on the Rights of the Child* states that:

... the education of the child shall be directed to (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential ...<sup>18</sup>

15 *Convention on the Rights of the Child*, art 28.1. Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). At <http://www.unhcr.ch/html/menu3/b/k2crc.htm> (viewed 15 December 2008).

16 Australian Human Rights and Equal Opportunity Commission, *Education Access, National Inquiry into Rural and Remote Education*, (August 2000). p 50. At [http://humanrights.gov.au/pdf/human\\_rights/rural\\_remote/Access\\_final.pdf](http://humanrights.gov.au/pdf/human_rights/rural_remote/Access_final.pdf) (viewed 17 January 2009)

17 Organisation for Economic Co-operation and Development, *Education at a Glance 2007* (2007), Chart B2. At <http://www.oecd.org/dataoecd/27/52/39254884.xls> (viewed 13 December 2008).

18 *Convention on the Rights of the Child*, art 29.1. Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). At <http://www.unhcr.ch/html/menu3/b/k2crc.htm> (viewed 15 December 2008).

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Article 2 of the *Convention on the Rights of the Child* states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>19</sup>

Despite decades of educational debate and fluctuating attention on Indigenous education, there appear to be no definitive approaches, no givens, and no fundamental positions that bureaucracies adhere to and categorically apply when delivering education to remote Indigenous students.

This is borne out by two facts. Firstly, new approaches are being continuously trialled in an effort to improve the less than acceptable national literacy and numeracy test results and secondly the various approaches have **not** significantly improved the academic achievements of Indigenous students over time. Let me re-iterate that point – the evidence of the past decades shows us that there is no one literacy approach that provides a 'quick fix' for remote Indigenous education.

Those people who have followed Indigenous education policy in past decades will have witnessed a cyclic and repetitive process of 'new' and favoured educational initiatives and approaches. People who have been teaching for long enough will have noted how some approaches are promoted, then demoted, only to re-emerge a decade later. New attendance schemes, new literacy approaches and new curriculum frameworks are worked and reworked. Some are funded for a short time and enthusiastically embraced by schools, only to be de-funded at the end of a three or four year funding cycle.

Schools continue to be the experimental grounds. School personnel have had little choice except to be compliant in the face of an ever shifting procession of policies and an increase in compliance activity and data collection demands. With no authoritative guide to Indigenous education and no real 'science' or empiricism to guide the decision-makers, at any given time, the newly funded and favoured policy approaches are those that have been promoted by the most powerful policy advocates. And any new Indigenous initiative is invariably a pilot project, usually on a short Commonwealth funding cycle with high reporting responsibilities.

There are good reasons to explain why a single, sustainable and transferable Indigenous education approach is elusive. Education approaches are highly influenced by the environmental context. The outcome of any approach is affected by the quality of the school leaders and educators; the resources available to the students; the environment in which the students are learning; and the general health and well-being of the student.

In remote areas, the school environment is often less predictable than in urban settings. At the school level there are the following variables:

- How well funded is the school? Do the student numbers attract at least one full-time teacher?
- What kind of books and learning materials are available? Is there internet access?
- How good is the school leadership? Are there Indigenous leaders and teachers at the school?

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<sup>19</sup> *Convention on the Rights of the Child*, art 2.1. Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). At <http://www.unhcr.ch/html/menu3/b/k2crc.htm> (viewed 15 December 2008).

- Have the best and brightest teachers been recruited to the school? To what extent are the educators competent communicators in a cross cultural environment?
- How well trained are the teachers in literacy and numeracy approaches? Are the teachers experts in their fields? Are they even trained in the subjects that they teach?
- What is the teacher turnover? If the turnover is high, is the school curriculum structured in a way to avoid repetition and ensure continuity of content and complexity?

The outcome of any educational approach can also be influenced by resources in the local community:

- What level of preschooling or early childhood learning is available and accessible to the children in the community?
- How well resourced is the community in terms of healthcare services, housing, policing and access to affordable, nutritious food?
- Is this influencing the health and the learning abilities of the children? For example, how prevalent is hearing impairment?

The governance and leadership within the community and the region can also have a large impact on educational outcomes for students:

- Are there regional plans or community plans that tie together preschooling, primary and secondary education and post school options like further study or employment pathways?
- Are there leaders in the community to provide role models for the students?
- To what extent is the community involved in the school and supportive of its aims?
- Is there employment or employment plans for the community and beyond so that students can see the relevance of learning and a life after school?

The many and complex variables that impact on school education mean that it is quite difficult to assess educational approaches. Each school and each community is unique with its own strengths and challenges. Therefore, while we can look at a whole school approach to literacy for example, and know that it may have some impact on the students' learning of literacy, we know also that there are numerous other variables at work. We know that the approach will be influenced by the expertise of the teacher and the functioning of the community. We know that just getting the child to school is a factor.

All of this gives us some important information. It tells us that any educational approach is only part of the equation. There are numerous variables and a one-size-fits-all approach will not achieve the same results in different environments.

Yet there is a problem here. Departments of education do not operate in a way which provides a school-by-school approach to resource allocation. While there may be some provision for local requirements, departments are usually reliant on formulas that drive staffing allocations and school resource allocations.

Some supplementary Commonwealth Indigenous Education Program (IEP) funding is available for schools through an application process. For example, the Indigenous Education Projects – Capital and Non-Capital Project funding is available to schools that can demonstrate projects which advance the objectives of the National Aboriginal and Torres Strait Islander Education Policy (AEP). Schools must present their case to

be eligible for these funds. However, small remote schools are often under-resourced in terms of people and expertise and therefore can be limited in their ability to advocate for these funds. In fact the remote schools with the greatest infrastructure needs are often least able to access capital funds.

A remote school with two to three teachers will be pressed to deliver the curriculum program alone, and unable to dedicate resources for local advocacy. In fact it is usually the successful schools and the loud advocates that attract government funds and resources.

Success can often bring additional resources and disadvantage can often breed further disadvantage.

Schools perform poorly because they may be under-resourced and remote from support services. In turn, education departments question the performance and the viability of underperforming schools. Departments may be under pressure for results from Commonwealth funders and state or territory Ministers and underperforming schools become a problem to be solved rather than a problem to be resourced.

Underperforming schools are usually the small remote schools with high proportions of Indigenous students who do not speak English as their first language. It is these schools and these students who become the subjects of the 'mainstream education' versus 'education in the community' debates.

While I have said that there are no agreed givens governing Indigenous education *approaches*, implicit in the questions I ask in this introduction are assumptions about the fundamentals that are required for a sound educational environment and service.

## 4. Indigenous education policy

There are some consistent themes in national Indigenous education policies. One theme that has been given considerable emphasis is the requirement for schools to form partnerships for decision-making with Indigenous communities. The first goal of the National Aboriginal and Torres Strait Islander Education Policy (AEP) provides clear direction for Indigenous involvement in education decision-making.

Major Goal 1 – Involvement of Aboriginal and Torres Strait Islander People in Educational Decision-Making

Major Goal 2 – Equality of Access to Education Services

Major Goal 3 – Equity of Educational Participation

Major Goal 4 – Equitable and Appropriate Educational Outcomes.<sup>20</sup>

The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) policy *Australian Directions in Indigenous Education 2005 – 2008* also provides logical direction for Indigenous education including partnerships in decision-making. It outlines five policy domains for Indigenous education:

1. Early childhood education
2. School and community educational partnerships
3. School leadership
4. Quality teaching
5. Pathways to training, employment and higher education<sup>21</sup>

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20 Australian Government Department of Education Science and Training, *National Aboriginal and Torres Strait Islander Education Policy (AEP)*. At <http://www.dest.gov.au/archive/schools/indigenous/aep.htm> (viewed 17 January 2009). (The 21 Goals of the AEP are reproduced at Appendix 3 of this report).

21 Ministerial Council on Education, Employment, Training and Youth Affairs, *Australian Directions in Indigenous Education 2005 – 2008*, At [http://www.curriculum.edu.au/verve/\\_resources/Australian\\_Directions\\_in\\_Indigenous\\_Education\\_2005-2008.pdf](http://www.curriculum.edu.au/verve/_resources/Australian_Directions_in_Indigenous_Education_2005-2008.pdf) (viewed 1 October 2008).

What strikes me immediately about the five MCEETYA domains is that they are no different to educational priorities for mainstream education. The domains outline the fundamental requirements for a coherent education service, no matter what the skin colour of the child. However, these five domains are especially critical for remote Indigenous education because they describe areas of provision that are absent in most remote and some regional locations.

The difficulty with the national policies is that while some Indigenous specific funding is tied to them, it is the states and territories that have responsibility for implementing education policy at the school level. The Commonwealth and state divide is a large obstacle to the implementation of coherent education policy. It is here that we hope to see cooperative federalism at its best, but unfortunately the Indigenous education systems have become complex, overly bureaucratic and unfocussed.

The unfortunate outcome of the federal, state systems is that good policy goes unimplemented. In the case of the MCEETYA recommendations there is an *Enabling process* to give effect to the five domains. However the *Enabling process* is a reporting and monitoring mechanism and not an implementation guide. Because the Commonwealth Parliament does not have legislative powers over state school education systems, there are limits on its ability to enact its policies. A body like MCEETYA can mandate reporting obligations to COAG, but it cannot hammer out an implementation strategy that ensures its five domains are implemented at the school level.

While this chapter is not structured around the MCEETYA domains or the goals of the AEP, my aim is to provide some recommendations for their implementation. The first part of this chapter focuses on *School and community educational partnerships*, as this is the most critical domain, and its success can lead to the realisation of all other domains.

I support the direction of the MCEETYA policy and the National Aboriginal and Torres Strait Islander Education Policy. With a new federal government and new opportunities for Commonwealth and state collaboration, much can be achieved if remote communities are resourced to develop:

- Local education forums which promote a shared understanding between students, their guardians and school staff about what education seeks to achieve;
- Functioning community governance structures to advocate and coordinate education resources at the local level;
- Indigenous school leadership and Indigenous educators;
- Top quality teachers and school leaders;
- Excellent preschool, primary and secondary school infrastructure; and
- Pre and post school options.

## Part 3: School and community partnerships

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To a large extent, school and community education partnerships are a 'given' in urban settings. Parents and communities make relatively well informed assumptions that schools reflect their values and aspirations. In fact parents often select a school based on their value systems, religion or philosophies. For the most part, education in urban environments is tailored to the kinds of outcomes that parents know and expect. For example, urban parents know that school is partly a preparation and a pathway to tertiary education or employment. For this reason, urban parents make a relatively well informed assumption that the school operates in partnership with them, reflecting their expectations and their values.

In remote communities many of the resources and options we take for granted in urban communities simply don't exist. Pre and post-school options are often limited or non-existent and there is likely to be limited employment in the region. Parents may have different views about what they want their children to achieve from education, and some may question the point of formal education if there are limited employment choices in the region. The non-Indigenous school staff and community members most probably have different cultural values, aspirations and life experiences. In fact, the points of difference may be greater than the similarities.

Despite these significant differences, the remote school model is likely to resemble its urban school counterparts and share a similar program and curriculum. With different languages, religions, philosophies and value systems, it is easy to see why some remote Indigenous parents and carers stay away from the school and do not feel part of its culture.

Yet it is these very differences that make school and community partnerships a necessity for successful schooling in remote regions. Evidence tells us that education is most likely to be successful when there are congruent messages being delivered by parents and by the school. A disjunction between the two groups only creates confusion and mixed messages for learners.<sup>22</sup>

Parents, carers, students and education providers must have a shared understanding about the purpose of school – what it provides, and what all parties can reasonably expect. The aspirations of parents and teachers must be discussed so that there is common understanding about the focus of the school program.

School staff need to explain the curriculum requirements, including any constraints on the ways in which they provide an educational service. Pre and post schooling provide the context and the bigger picture for education over the life cycle and should be part of local discussions. Post school options are an especially critical part of any discussion between parents and schools because they shape some of the purpose of schooling.

The education debates should occur in these forums – not at a distance. It is the parents, the elders, the students and the wider community who should decide the education approach. Do parents want their children in boarding schools for senior

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22 S Christenson & C Peterson, *Parenting for School Success*, Review Research, Department of Educational Psychology, College of Education and Human Development, University of Minnesota (2006). At: <http://www.extension.umn.edu/family/00079.html> (viewed 5 January 2008).

secondary education? Does the community want the school to provide Bilingual education? What is the best approach to suit the local needs?

Local negotiations and agreements are the only way to shape the provision of education in remote communities because of the inherent complexity and diversity of each community. In addition, we know that it is not possible for education bureaucracies to be education providers at a distance. They simply can't do it in a way which is responsive to local needs and aspirations. The tiers of state and federal government further complicate education provision and coherence.

The funding and administration of Indigenous education is particularly complex and there is a good deal of duplication of effort.

The Commonwealth and the states both develop education policies and initiatives to support the coordination and implementation of Indigenous education. The Commonwealth provides significant supplementary funding for Indigenous education in primary and secondary schools and financial support for Indigenous families of primary and secondary students.<sup>23</sup> The Commonwealth does not have direct control of education provision to Indigenous education however, unless its funding arrangements are through *Tied Grants*.<sup>24</sup>

It is the state and territory departments that recruit and employ teachers, fund and maintain school infrastructure and develop the curriculum frameworks which drive the classroom content. Australia's states and territories have their own legislations governing primary and secondary education and they also regulate and administer financial support to the non-government school sector.

As well as the government and non-government education providers, there are philanthropic organisations and others who add a further layer of complexity to the administrative arrangements for school education. This means that Indigenous education funding and policies are not always coherent. It also means that we cannot assign responsibility for Indigenous education to one tier of government nor can we assign the implementation of Indigenous education to a single provider group. We must therefore consider the process of delivering remote Indigenous education as a coalition effort with numerous forces and interests.

## 1. The state cannot do it on its own and neither can remote communities

Decisions about educational approaches and resources must be made at the community level and bureaucracies must be in a position to respond to requirements on a community-by-community basis. The capabilities of centralised bureaucracies to design and deliver services to remote regions are approximate at best.

The Council of Australian Governments (COAG) trials of 2003 to 2005 were an attempt to coordinate services to Indigenous communities from the different tiers and departments of Australian governments. The COAG trial outcomes and evaluation at Wadeye in the Northern Territory should be instructive for policy-makers attempting to coordinate services for remote Indigenous communities.

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23 Advisory Council of Jurists & Asia Pacific Forum of National Human Rights Institutions, *Terms of Reference on the legal obligations of States for the implementation of economic, social and cultural rights, with respect to the right to education: Questionnaire for the Background Paper on the right to education*, Response of the Australian Human Rights and Equal Opportunity Commission (12 May 2006), p 4–5.

24 *Australian Constitution*, s 96 (Financial assistance to States). At <http://australianpolitics.com/articles/constitution> (viewed 1 October 2008).

The trial failed due to the intractability of government departments. The whole-of-government approach relied on coordination from centralised bureaucracies rather than from the community. According to an independent evaluation of the Wadeye trial, bureaucracies were primarily interested in defining their turf and their responsibilities and neither the Commonwealth nor the Northern Territory governments acted upon community requests.<sup>25</sup>

Community proposals for action were considered to be draft documents with an unclear status. Even though the Wadeye community had developed a representative governance model to give voice to the 20 clans in the Thamarrurr region, the representative voices of the local people were not heeded.

Ultimately the trial demonstrated the inability of governments and their departments and agencies to participate in cooperative federalism when they must share responsibility for service delivery. It demonstrated that governments lack the capacity to be responsive to decentralised communities with diverse needs. Over the three year period of the trial four new houses were built. This occurred at a time when 15 houses became uninhabitable and 200 babies were born into the community – a community which already had overcrowding. While some additional funds were provided as part of the Wadeye trial, the reporting responsibilities increased exponentially.<sup>26</sup>

Most government services are designed for urban requirements and adapted for remote and regional contexts. Such a limited model cannot meet the needs of communities that are different in composition, demography and resources from urban communities. The administration of services must be driven from the community so that there is a direct connection between what is required and what is delivered.

The findings of the Wadeye evaluation support MCEETYA's *School and community educational partnerships* model. They are:

- Expectations of the partners need to be clarified and mutually understood at the outset and reviewed periodically throughout the process.
- The identification of priorities needs to be specific, mutually understood and limited to an achievable level.
- Shared Responsibility Agreements should encourage the development of achievable deliverables that result in visible outcomes on the ground.
- The processes require a discipline on the part of the partners if they are to be effectively implemented.
- There is a need for an 'authorised' person (or group) to manage the process on behalf of the partnership. Someone (or some body) needs to be in charge of the trial.
- There is a need to work within the capacity of the Council and the community when developing strategies for delivering services.
- Developing effective communication links between the partners and within agencies is essential for the whole-of-government approach to succeed.<sup>27</sup>

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25 B Gray, *Council of Australian Governments (COAG) Trial Evaluation: Wadeye, Northern Territory*, Commonwealth of Australia, WJG & Associates Pty Ltd, (2006), p 6. At [http://www.facsia.gov.au/internet/facsinternet.nsf/via/indigenous/\\$file/COAG\\_NT.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/via/indigenous/$file/COAG_NT.pdf) (viewed 7 October 2008).

26 B Gray, *Council of Australian Governments (COAG) Trial Evaluation: Wadeye, Northern Territory*, Commonwealth of Australia, WJG & Associates Pty Ltd, (2006), p 9–12. At: [http://www.facsia.gov.au/internet/facsinternet.nsf/via/indigenous/\\$file/COAG\\_NT.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/via/indigenous/$file/COAG_NT.pdf) (viewed 7 October 2008).

27 B Gray, *Council of Australian Governments (COAG) Trial Evaluation: Wadeye, Northern Territory*, Commonwealth of Australia, WJG & Associates Pty Ltd, (2006), p 6. At [http://www.facsia.gov.au/internet/facsinternet.nsf/via/indigenous/\\$file/COAG\\_NT.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/via/indigenous/$file/COAG_NT.pdf) (viewed 7 October 2008).

Establishing the need for partnerships is something that is relatively easy to come to in principle. It is considerably more difficult to develop the structures which make partnerships functional and self sustaining. An effective vehicle to do this might be through local education forums. However, if local education forums are to be established in future, they will require funds to pay a secretariat to communicate and record their recommendations and agreements. Local forums may also require funding for associated services such as translator/ interpreter services where required. Each local forum must be able to communicate with relevant education providers, government departments, industry groups, philanthropic groups and non-government organisations.

Funding arrangements for parental involvement in school decision-making have changed in the past decade and there is evidence that funds for this purpose have diminished. The Aboriginal Student Support and Parent Awareness (ASSPA) program operated until 2004. The ASSPA programs were developed to:

- increase the participation in education and attendance of Indigenous youth of compulsory school age;
- encourage the establishment of effective arrangements at the local level for the participation of Indigenous parents and community members in decisions regarding the delivery of preschool, primary and secondary educational services to their children;
- promote increased awareness and involvement of Indigenous parents in the education of their children;
- develop the responsiveness of schools and their staff to the educational needs and aspirations of Indigenous students;
- encourage the participation and attendance of Indigenous children in preschool education programmes; and
- achieve the adequate preparation of Indigenous children through preschool education for their future education.

The ASSPA funding was allocated to each school committee based on a per capita formula taking into account the number of Indigenous students enrolled at the school and whether the students are preschool/ primary or secondary, weighted for remoteness. The per capita rates were:

Primary/preschool remote	\$215
Primary/preschool non-remote	\$110
Secondary remote	\$315
Secondary non-remote	\$160 <sup>28</sup>

ASSPA was replaced in 2005 by the Parent School Partnership Initiative (PSPI) program.

The new PSPI funding is obtained through a submission process which puts the onus on the school to apply for funds. The Australian Education Union conducted a survey in 2005 to determine the impact of the changes. Of the 561 responses, 116 replies indicated 'that the submission writing process [was] too difficult.... Many schools have determined that the small amount of funding [was] not worth the effort and have not applied.' In 2004, 430 of the 561 respondent schools (77 percent) had ASSPA committees receiving a total of \$2,529,325. In 2005, 53 of the 561 schools (9 percent)

28 Australian Government Department of Employment and Workplace Relations, *Indigenous Education Direct Assistance (IEDA) Programme Review – Ch.3 Aboriginal Student Support and Parent Awareness (ASSPA)*. At [http://www.dest.gov.au/sectors/indigenous\\_education/publications\\_resources/indigenous\\_education\\_direct\\_assistance\\_programme\\_review/chapter\\_3.htm](http://www.dest.gov.au/sectors/indigenous_education/publications_resources/indigenous_education_direct_assistance_programme_review/chapter_3.htm) (viewed 17 January 2009).

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received funding for the Parent School Partnership Initiative (PSPI) at a total amount of \$600,431.<sup>29</sup> While the AEU survey was limited to respondent schools, there is evidence that the PSPI funding is not meeting its targets Australia-wide.

The PSPI is part of the Government's Whole of School Intervention Strategy which aims to involve communities and parents in schools. The Whole of School Intervention Strategy comprises two elements:

- the Parent School Partnerships Initiative which aims to improve attendance, literacy and numeracy skills and Year 12 educational outcomes; and
- Homework Centres (HWCs) which provide a supervised after school hours environment for Indigenous students to complete their homework and to study.

In 2006 more than \$32 million was approved for distribution for the Whole of School Intervention Strategy. However the expenditure was less than the amount approved and only \$26,451,270 was distributed.<sup>30</sup> The underspend may have occurred because small, remote schools had difficulty with the submission process. Given that 50 percent of PSPI funding is targeted to remote schools, it would be useful to see a disaggregation of these funds to see whether remote schools were able to take up their 50 percent allocation.<sup>31</sup>

Making partnerships work in future will require the development of capacity at the local or regional levels. Rather than putting the onus on schools to develop submissions as is the case for PSPI funding, governments should ensure that communities or regions are resourced to create capacity for these forums. This may mean providing additional resources in places where there are limited governance structures or where the capacity of the local community is limited. The Australian Government along with state and territory governments will need to make a commitment to education partnerships if these bodies are to be established in future.

The commitment must be more than Commonwealth policy. The commitment in policy must be accompanied by a facilitating process and funding which enables implementation. At this stage the Parent School Partnership Initiative program is not adequately targeted for its purposes. This program is not going to assist small remote schools because of the onus it puts on schools to apply for funds and report the expenditure. The application and reporting obligations put small remote schools at a disproportionate disadvantage. Therefore governments must develop new funding and resourcing arrangements to realise this policy objective.

The *Close the Gap* coalition has developed agreement models with targets and benchmarks which hold the tiers of government accountable for implementation actions as well as health equality outcomes. The *National Indigenous Reform Agreement* is the overarching framework for the *Close the Gap* agreements. It captures the objectives, outcomes, outputs, performance measures and benchmarks that all governments

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29 D Moyle, *Report on a Survey of Schools on the Changes in Commonwealth Indigenous Education Funding* (2005), p 4. At <http://www.aeufederal.org.au/Publications/Indsurvey2005.pdf> (viewed 14 January 2009).

30 Department of Education, Employment and Workplace Relations, *National Report to Parliament on Indigenous Education and Training, 2006*, (2008) p 151. At <http://10.1.1.248:8080/ProgressMessages/NationalReporttoParliamentonIndigenousPublications.rtf?proxy=10.1.1.248&action=complete&index=16&id=105287796&filename=NationalReporttoParliamentonIndigenousPublications.rtf> (viewed 28 January 2009).

31 Department of Education, Employment and Workplace Relations, *National Report to Parliament on Indigenous Education and Training, 2006*, (2008) p. 127. At <http://10.1.1.248:8080/ProgressMessages/NationalReporttoParliamentonIndigenousPublications.rtf?proxy=10.1.1.248&action=complete&index=16&id=105287796&filename=NationalReporttoParliamentonIndigenousPublications.rtf> (viewed 28 January 2009).

have committed to in order to close the gap in Indigenous health disadvantage. It is a guiding, monitoring and evaluation framework which could be replicated for the purposes of monitoring and evaluating government action on remote Indigenous education.

Performance against the measures of the *National Indigenous Reform Agreement* will be reported by the Steering Committee for the Review of Government Service Provision in the report to COAG, *Overcoming Indigenous Disadvantage*. Similar reporting could be made on remote education. It is essential that we see national reporting to assess action against targets and consistency across jurisdictions.

## 2. How do we form education partnerships?

The Deputy Chief Minister of the Northern Territory recognises the importance of remote education partnerships and is in the process of developing *Community Partnership Education Boards*.<sup>32</sup> The Minister said the following about the role of the Community Partnership Education Boards:

These structures must allow communities to assume more responsibility and accountability for the delivery of quality education and training services by empowering them to coordinate the effective use of resources and expertise. The new approaches to partnerships must allow groups of Indigenous communities to form regional governance structures that can act as consumer representative fund holders with responsibility for purchasing education and training services for their communities.<sup>33</sup>

Numerous players can be a positive force in any collaboration. The challenge is to gather them together so that there is meaningful discussion, collaboration, information-sharing and decision-making.

There are existing models of educational collaboration that provide some instructive frameworks for partnership approaches. In 1997 a group of people inspired by Graham (Polly) Farmer set up a Foundation to establish and manage after-school education support projects for Indigenous students who want to complete their secondary education.<sup>34</sup> The Foundation now coordinates a number of projects, each tailored to suit a remote Indigenous community. The community members and the local context are essential drivers of each project.

The work of the Graham (Polly) Farmer Foundation is based on a coordinated model of community development. The Foundation coordinates the actions of all other parties and provides a central point for funding from private donors, governments, community interests and other stakeholders. The Foundation has developed a model for managing the projects which includes a steering committee of project partners who have responsibility to set the strategic direction.

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32 Minister Scrymgeour, Northern Territory Minister for Education and Training, 'Transforming Indigenous Education', (media release, 30 April 2008). At <http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=3989&d=5> (viewed 7 October 2008).

33 Northern Territory Department of Employment, Education and Training, *Research Priorities 2008 – 2012*, p 9. At [http://www.det.nt.gov.au/corporate/research/docs/research\\_priorities.pdf](http://www.det.nt.gov.au/corporate/research/docs/research_priorities.pdf) (viewed 7 October 2008).

34 Graham 'Polly' Farmer rose to become one of Australian Rules Football's greatest players. His early life was at Sister Kate's Home – an orphanage for children of Aboriginal descent. He went on to play 392 league games from 1952 to 1971 and win two Sandover Medals. He was 10 times his club's fairest and best player. He was the first footballer to be named as a Member of the British Empire (MBE).

### **Case Study 1: Graham (Polly) Farmer Foundation – A partnership model for remote communities**

The aim of the Graham (Polly) Farmer Foundation is:

- To provide support to Indigenous youth to achieve their potential.
- To enhance the skills and potential of young Indigenous people.
- To generate positive aspirations in young Indigenous people.
- To assist Indigenous youth to relate to the community in general, particularly to other young Australians.

The Foundation establishes and manages after school educational support projects for Indigenous students who have the capacity, interest and potential to go on and complete their secondary education. The expectation of the Foundation is that the students will go on to tertiary studies – university, TAFE, apprenticeships and traineeships and employment. The projects are individually funded through private industry, federal and state Government support.

The ‘Partnership for Success’ projects are the central element of The Graham (Polly) Farmer Foundation. Each Foundation project involves local Indigenous communities, private and government partners and the Foundation working together in partnership to introduce and manage projects to improve the educational outcomes of Indigenous students. The partnerships aims are to enable students to compete effectively for employment, apprenticeships, traineeships and/ or tertiary entrance when they leave school.

Whilst each project is tailored to meet its community’s particular needs, there are some key elements of all projects:

- Each project is a partnership between the Aboriginal community, private industry, state and federal governments, and local schools.
- The governing body for each project is a Steering Committee which is made up of each of the project partners. The Steering Committee oversees the project and provides strategic level management.
- The Graham (Polly) Farmer Foundation establishes, facilitates and manages the projects on behalf of the local Steering Committee.
- A project leader undertakes the day-to-day organisation of the project under the guidance of a local operations committee. He/ she is directly responsible to the Steering Committee.
- Each project develops its own vision and objectives and establishes a process for selecting students for the project. Students are selected on the basis of their interest, capacity and potential to succeed and complete their secondary education.
- Each project has an enrichment centre that is available to students four afternoons a week and is used for visiting speakers and family events. The project provides an after school environment where students receive tutoring and support.
- Each participating student and his/ her parent/ guardian sign a compact which sets out the student’s responsibilities in areas such as school and enrichment centre attendance, commitment to achieve and participation in project activities.

- Each project involves students being provided with intensive and targeted support through:
  - tutorial and vocational education assistance;
  - access to tertiary motivational programs; and
  - a progressive and comprehensive leadership and study skill program from Year 8 to Year 12.

The Graham (Polly) Farmer Foundation 'Partnership for Success' Projects are being offered in: Alice Springs; Carnarvon; Kalgoorlie; Karratha / Roebourne; Kununurra; Mandurah; Newman; Port Augusta; Port Hedland; and Tom Price.

### 3. What is success in remote education?

Essential to the success of any education system is dialogue between the education providers (the school staff), and education consumers (the students, parents and carers), about what education seeks to achieve. Local education stakeholders should be in a position to discuss and consider the following:

What is school success and how does the education system give students optimum opportunities to achieve success?

The answers to this question should form the basis of local education priorities and plans. While not an exact paraphrase, the question is a variation of this one – education for what? Students, parents, carers, school staff, communities and governments need to know about the options for students both in their region and in the wider Australian society.

In Australia, English literacy and numeracy are non-negotiable components of education curricula. There is general agreement amongst Indigenous and non-Indigenous education stakeholders that English literacy and numeracy outcomes are fundamental for Indigenous and non-Indigenous students alike. Along with other Australian students, Indigenous students sit national (English) literacy and numeracy tests and their results are compared against benchmark standards.

It is the other aspects of education, outside of the compulsory curricula offerings, that should form the basis of local discussions about the shape of local education. If education stakeholders begin by describing what success looks like for local students, and describe success for school graduates, they are in a position to design an appropriate education service.

At a certain point, school education becomes closely linked to post school options. Students and their families begin to consider further training, education or employment. Schools have a role to play in making the links to the post school phase. The following case study shows what is possible in linking school education to employment options in the local area.

## Case Study 2: Maningrida School – Education and training with a focus on achieving success in the region

Maningrida is a remote coastal community in Arnhem Land, 350kms from Darwin. It is situated on the East Bank of the Liverpool River Estuary at one of the northern-most points of Australia. Maningrida is home to the Gunibidji people and has a population of approximately 2,600 people; the majority of whom are Indigenous. There are 10 Indigenous languages spoken in the region and most residents are able to speak three or four dialects.

The local Maningrida Community Education Centre (CEC) offers primary and secondary education to the township and the outstation communities. The CEC provides out-reach education services and wet season education programs for the 35 Maningrida outstation communities. The CEC is a Bilingual school, meaning that primary students learn in their own language before English is gradually introduced during the primary years. The two languages that form the two Bilingual programs are Ndjebbana and Burarra.

In 2003 the Maningrida (CEC) was accredited to offer secondary schooling to Year 12. This means that students are now able to complete their senior years of school without having to relocate to finish school.

Despite setbacks such as a damaging cyclone in 2006, the CEC has developed a reputation for providing successful secondary school programs. Two standout programs are the *Contemporary Issues and Sciences course* and the *Junior Rangers course*.

The *Contemporary Issues and Sciences course* is a formal education program based on science, culture and caring for country. The program had its beginnings in 2005 when local teachers and students took to the outdoors because they did not have a science laboratory. They hoped to be able to identify spiders and other insects in the bush environment. Since the program began in 2005, the students at Maningrida CEC have identified 45 new insect species. This program is an excellent example of curricula which engages students by providing an intersection between Indigenous and non-Indigenous systems of knowledge and culture. The students use their local knowledge of flora and fauna to support their technical learning in the classroom.

Courses such as this one are innovative in their methodology because they engage Indigenous students in learning that is 'hands on' rather than strictly classroom-based. Linking life in the Maningrida community to the broader scientific community is an important way of recognising the value of Indigenous knowledge and a means of creating connections outside the community.

The Junior Rangers program is integrated into the curriculum of Year 11 at the school, offering a pathway to employment in a growth industry in the Arnhem region. The course links to the *Djelk Rangers Program* which includes a Men's and Women's Program as well as the Junior Ranger Program. The Djelk Rangers Program operates under the auspice of the Bawinanga Aboriginal Council; the entity with responsibility to manage both the land and sea country of the Maningrida area.

Since the introduction of the science and ranger courses there have been improvements in school attendance and academic performance. The benefits of the programs are also being felt beyond the school gates with a number of students accessing local employment and some going on to university education.

Since the secondary program commenced in 2003, the school has ranked highly amongst Northern Territory schools. The number of students completing the Northern Territory Certificate of Education has been increasing every year. There were four Year 12 graduates in 2004, eight in 2005 and eleven in 2006, with three students gaining entrance into tertiary institutions. Much of this success is attributed to the fact that the local curriculum is relevant and interesting and it reflects local requirements and opportunities in the region.

Like the Maningrida Community Education Centre, another remote Northern Territory community has defined its measure of education success and has worked consistently to achieve a remarkable outcome.

The remote Indigenous community at Garrthalala in Arnhem Land decided that they wanted the local young people to access senior secondary education in their Homeland communities of Arnhem Land. Over a period of years, they collaborated to develop a successful secondary education program which ultimately enabled seven students to graduate in 2008. This is the first time that students in very remote Homelands have been able to complete Year 12 in their communities. The following case study tells the story of the way in which this school established itself with very little government support. It underscores the commitment of some very motivated people in this very remote part of Australia. It also reminds us that there is much work ahead to provide school education to remote Indigenous students. It tells us that when the school service is available, incredible things can happen.

### **Case study 3: Garrthalala – Success in a remote school**

In 2008 the remote Arnhem Land community of Garrthalala had mains electricity connected for the first time. In the same year the community celebrated the secondary school graduation of seven local students. The students did not go to boarding school far away from home; they were educated in their small home communities in Arnhem Land.

It's hard to describe the extent of this achievement. Garrthalala is situated on Calendon Bay, one and a half hours drive over rough roads from Yirrkala the larger Aboriginal community of the Yolngu people. To say these homeland communities are remote is an understatement. The homeland communities are tiny outstations, comprising a few houses that accommodate clan families living on their ancestral lands. Some of the outstations are accessible by car, though during the wet season they are inaccessible by road and by air.

Up until 2006 the secondary students had no classroom and had to share space with primary school students. Power was provided by a generator. A satellite dish provides internet access for five computers on slow dial-up access. Students travel to the school from surrounding Homeland communities to receive instruction at Garrthalala for three days per fortnight.

They travel by plane to this tiny school which acts as a boarding facility. Up until 2008, those who were not from Garrthalala had to sleep on the school floors during the night and cook their meals with assistance from teachers. In the day time the students had to move their swags to make room for desks and learning resources. In 2008 a small dormitory was built for cooking and sleeping.

The secondary school building and dormitory were not provided by government departments. They were built by volunteers from the Geelong Rotary Club of Victoria with assistance from parents and community members of Garrthalala and some dedicated teachers. Funds for the buildings came from the Yirrkala Homelands School.

The school manages with no secure operational funding. The secondary program has received some one-off funding from Commonwealth discretionary funds and otherwise it manages with very little funding. The school receives a staffing allocation of one lead teacher, an additional teacher and two assistant teachers. One of the assistant teachers is a former student. There are still not enough facilities for all of the students who want to attend the secondary program from surrounding homelands. There will be additional challenges ahead for this growing school.

Establishing the school and teaching the school program under these conditions has not been an easy road. When the teachers were asked about the difficulties of the work they said the following:

Camping out in the homelands and the heat...

At times inadequate facilities such as no air-conditioning and one shower to share...

No water at times when the solar powered pump is not working at Garrthalala...

A lack of (specialist) staffing, and staffing in general, and limited VET courses accessible to remote students...

Limited access to careers counselling for students graduating...<sup>35</sup>

One can only begin to imagine the educational challenges of this student group and its teachers. What did it need to get this school to a position where it was able to offer Year 12? What were the resources – both material and human? What were the preconditions and the process?

According to the school teachers, the driving force of the project was:

the community support and support of Garrthalala elders... [It was] a desire by Homeland communities to see secondary students access accredited secondary education in the Homelands, away from the temptations and problems facing Indigenous students in the hub community of Yirrkala or the mining town Nhulunbuy.<sup>36</sup>

The measure of success for parents and elders was for students to complete secondary education without having to leave their home communities. They wanted the young people of the region to achieve the same level of education attainment as students in urban areas. The parents, community members and students were prepared to work hard to achieve this goal, and they did it in conjunction with a responsive teacher workforce.

## 4. Developing local forums

A well functioning education system in remote locations requires a forum or a medium through which local education stakeholders can negotiate and develop agreements about local education priorities. Parents and education staff are critical members of any education forum and so are councils, industry, philanthropic groups and health providers.

Education does not exist in isolation; it is a pathway from early childhood to employment incorporating many facets of local life such as culture, health, safety and nutrition. Each community must be in a position to configure its own structure which will bring together other partners at the Commonwealth and state or territory levels.

In a Western Australian report into family violence and child abuse, Sue Gordon and her co-authors developed a model for developing and delivering services and channelling funding to Indigenous communities.<sup>37</sup> Entitled, *Planning, resource allocation and*

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35 Garrthalala Teachers, *Email correspondence with the Australian Human Rights Commission*, 11 December 2008.

36 Garrthalala Teachers, *Email correspondence with the Australian Human Rights Commission*, 11 December 2008.

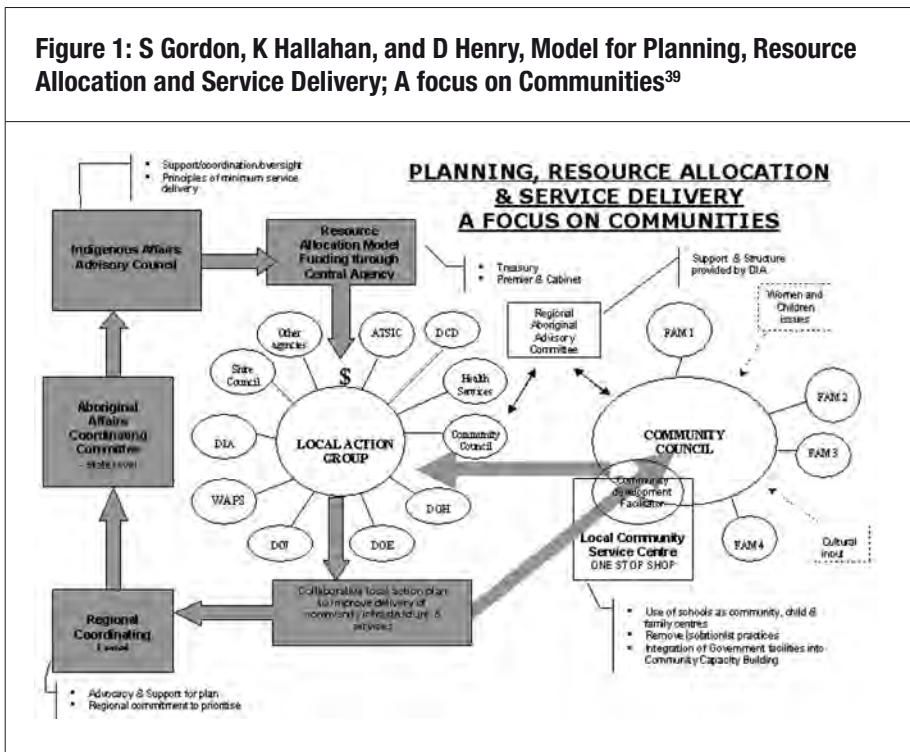
37 S Gordon, K Hallahan & D Henry, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia (2002). At <http://www.dia.wa.gov.au/Documents/Policies/GordonInquiryReport.pdf> (viewed 7 October 2008).

service delivery – A focus on communities, the model provides a structure which puts local stakeholders at the centre of decision making. The model is set out in Figure 1 below. The benefit of this model is that it is an authoritative framework through which bureaucracies can support and resource local plans.

While the Gordon model was developed to address family violence, the processes for coordinated and coherent service delivery are transferrable to other areas, including Indigenous education. Gordon argues:

There is not one piece of research that suggests that government agencies or other service providers can deal with this [family violence] problem on their own. It is clear from the research, consultations with Aboriginal communities, submissions provided by government agencies and others, that Aboriginal people and Aboriginal communities must be involved in shaping the solutions...<sup>38</sup>

**Figure 1: S Gordon, K Hallahan, and D Henry, Model for Planning, Resource Allocation and Service Delivery; A focus on Communities<sup>39</sup>**



38 S Gordon, K Hallahan & D Henry, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia (2002). At <http://www.dia.wa.gov.au/Documents/Policies/GordonInquiryReport.pdf> (viewed 7 October 2008).

39 S Gordon, K Hallahan & D Henry, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia (2002), p 248. At <http://www.dia.wa.gov.au/Documents/Policies/GordonInquiryReport.pdf> (viewed 7 October 2008).

## 5. Integrating industry and philanthropic groups in education programs

There are government service providers and departments in most remote Indigenous communities and regions. Increasingly too there are non-government organisations or philanthropic groups delivering education programs and facilitating community development.

Education is much more than learning in a school classroom. Learning begins from the moment a child enters the world and continues throughout his or her lifetime. Education occurs in the home, in the workplace, in all social settings and during leisure time. A community and a culture that supports learning and develops its own learning is a community that is primed for educational success. A good education environment does not cordon off separate areas of learning; rather it sees the different learning environments, both formal and informal, as part of an organic whole; a whole of life education journey.

Numerous philanthropic groups, local councils and industry groups support Indigenous community members to develop and deliver learning projects which may be tied in with school curricula or complimentary to school programs.

In the Kimberley region of Western Australia, elders and community members have developed projects to connect young people to country. These projects, which sit outside of the formal education system, provide an example of the ways in which culture, learning and employment can be driven by the community. This form of learning should be considered in any local or regional education plan. While the school is not always the site for learning projects, connections should be made through local or regional plans to create potential for collaboration and integration of the widest range of learning resources and pathways.

The Yiriman Youth Project in the Kimberley, Western Australia is a development and coordination point for cultural education and training projects for young people in the region. Projects such as this one reinforce the various ways in which education has direct meaning to the lives of young people.

### **Case Study 4: Yiriman back to country project – Community education delivered by elders and community members**

The Yiriman Youth Project is an Aboriginal young men's and young women's project in the Nyikina, Mangala, Walmajarri and Karajarri language regions. This country extends from Bidyadanga in the West Kimberley to Balgo in the Southern Kimberley.

Yiriman activities incorporate back to country trips and projects that focus on youth at risk. The Yiriman Youth Project's main focus is building confidence through culture, working alongside young men and women aged between 14 – 30 years.

The project was initiated by Aboriginal elders who were concerned that some of their young people had no jobs and no future. Elders from the four language groups developed ideas over many years about ways they could stop substance misuse, self-harm and suicide in their communities.

Their ideas provided the foundation for the Yiriman Youth Project which promotes life skills and sustainable livelihoods through youth leadership, land management and community development. All Yiriman projects have a cultural focus aimed at developing opportunities for young Aboriginal people. The various Yiriman activities have been successful in getting youth out of urban areas and away from substance abuse and back onto traditional country.

Yiriman works in partnership with Indigenous organisations in the Kimberley area. The partner organisations are many and varied. The Land and Sea Unit of the Kimberley Land Council provides opportunities for young people to participate in land and sea management. Mangkaja Arts and Derby Aboriginal Health Service provide community driven bush medicine trips. The Departments of Justice and Community Development offer diversionary programs which include camel walks and cultural youth exchanges with the Shire of Derby West Kimberley.

Other partner organisations involved in cultural land management, performing arts and cultural workshops include the Kimberley Language Resource Centre, NAILSMA, the Kimberley Regional Fire Management Project, the Natural Heritage Fund, the Australian Quarantine Inspection Service, Macquarie and Murdoch Universities.

Passing on cultural knowledge from generation to generation has been essential for Kimberley clans in proving their Native Title claims to traditional lands.

Mervyn Mulardy, the Karajarri Chairperson and Yiriman Cultural Advisor described the importance of the Yiriman Youth Project to Native Title in these terms:

Karajarri people had to show the Federal Court their relationship to country. Well...we gotta show our young people our connection. Take them out, show them country and get them to look after country.

The 'Yiriman' tower (Mesa – a small flattop hill) is one of many very important cultural landmarks in the region.

John Watson, a Nyikina/ Mangala Elder and Yiriman Founding Director said:

We want to show them their base (homelands). If we don't show them country and identity...you're nothing! A lot of people travelled through this countryside, it was a sign for helping people find jila (waterholes).Yiriman is a place that a lot of people got taken away from.....we gotta take these kids back.

Anthony Watson, a Nyikina/ Mangala Cultural Advisor and Yiriman Director said:

We want to make it known to young people that this is where their family lived and hunted around that country. Show them where their grandfather and grandmother were born, what they ate and how to look after country and animals.

## 6. Summary of issues: School and community partnerships

- Parents, carers, students and education providers must have a shared understanding about the purpose of school and what constitutes educational success;
- Local negotiations and agreements are the only way to shape the provision of education in remote communities because of the inherent complexity and diversity of each community;
- A well functioning education system in remote locations requires a forum or a medium through which local education stakeholders can negotiate and develop agreements about local education priorities
- Remote education forums will require ongoing capacity-building, resources and funding;
- The *National Indigenous Reform Agreement* provides a model for assessing government action on remote education; and
- Government performance on remote education should be reported by jurisdiction to COAG.

## Part 4: The best and brightest teachers and leaders

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We recognize that no education system can rise above the quality of its teachers, as they are key to improving the quality of education as well as to expanding access and equity.<sup>40</sup>

In 2007, an international study of student performance from 57 countries found that the *quality* of school teachers is the most important factor impacting on student learning outcomes. The report based its findings on data from the OECD's *Programme for International Student Assessment* finding that the world's best performing school systems require three attributes:

1. Getting the right people to become teachers;
2. Developing them into effective instructors; and
3. Ensuring that the system is able to deliver the best possible instruction for every child.<sup>41</sup>

Closer to home, a 2006 trial conducted in the remote Western Australian community of Halls Creek demonstrated the importance of teachers in student school attendance.<sup>42</sup> The project trialled a number of strategies to increase student attendance. A significant finding of the trial was that student attendance rates varied between classes. One teacher had 20 percent greater attendance than other teachers who were participating in the trial. The report found that: 'Variations in teacher quality could well be an issue affecting school attendance rates.'<sup>43</sup>

The evidence of recent decades is unequivocal; teachers play a crucial role in the learning environment, affecting both student attendance and student academic performance. It therefore follows that the recruitment and retention of the best quality teachers must be of the highest priority for education providers.

Teacher recruitment in Australia is carried out by state and territory government and non-government education departments. Departments make varying efforts to provide appropriately qualified people to schools within their jurisdiction. All departments have provisions to enhance teacher recruitment to regional and remote locations and the majority of departments have some form of provision to encourage the recruitment of Indigenous teachers. However, the forms of the incentives vary from provider to provider as does the quality and focus of the various provisions.

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40 United Nations Educational, Scientific and Cultural Organisation, *Bali Declaration*, Seventh E-9 Ministerial Review Meeting, ED/EFA/2008/ME/1 REV (2008). At <http://unesdoc.unesco.org/images/0015/001584/158455E.pdf> (viewed 14 October 2008).

41 Western Australia Education Taskforce Report, *Public Access – Twomey Report*, Chapter 4, *Leadership and Mentoring* (June 2008). At [http://sstuwa.org/index.php?option=com\\_content&task=view&id=754&Itemid=566](http://sstuwa.org/index.php?option=com_content&task=view&id=754&Itemid=566) (viewed 19 November 2008).

42 Australian Government Department of Employment and Workplace Relations, *Halls Creek Engaging Families Trial, February–July 2006*, Evaluation Report (2006).

43 Australian Government Department of Employment and Workplace Relations, *Halls Creek Engaging Families Trial, February–July 2006*, Evaluation Report (2006).

## 1. Indigenous leaders and educators

The recruitment and retention of Indigenous teachers is a necessary challenge for education systems because they show Indigenous students that school is relevant and reflective of their world.

For the most part, our education system does not reflect Indigenous culture. Its values and knowledge systems predominantly reinforce western cultural perspectives and western methods of learning. Australian schools follow a Christian calendar year and English is almost exclusively the language of instruction in classrooms. When these value systems are foreign to the beginning student, they can have a negative impact on the ways in which Indigenous students see themselves as learners.

...western cultural signs have both a subtle and profound impact on students. They help to shape each student's view of the world, and his or her place in it.<sup>44</sup>

When students are able to make associations between the information they receive at school and at home they are able to integrate and scaffold new learning. An Australian research project involving over 80 school sites found that there are certain influences that improve learning outcomes for Indigenous students. The first finding of the study is '...the recognition, acknowledgement and support of culture.'<sup>45</sup>

While Indigenous culture can be supported through appropriate curricula and the placement of Indigenous art, images and symbols in the school environment, Indigenous staff are the most important component.

International human rights standards support the right of the child to culture.

Article 29, the Convention on the Rights of the Child states:

... the education of the child shall be directed to (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own ...<sup>46</sup>

Article 14 of the *UN Declaration on the Rights of Indigenous Peoples* states that:

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.<sup>47</sup>

44 Department of Employment, Education And Training Northern Territory, *Indigenous Languages and Culture in Northern Territory Schools* (2005), p 1. At [http://www.det.nt.gov.au/education/indigenous\\_education/previous\\_publications/indigenous\\_languages\\_culture\\_report/indigenous\\_languages\\_culture\\_report.pdf](http://www.det.nt.gov.au/education/indigenous_education/previous_publications/indigenous_languages_culture_report/indigenous_languages_culture_report.pdf) (viewed 12 January 2009).

45 Commonwealth Department of Education, Training and Youth Affairs, *What Works? Explorations in Improving Outcomes for Indigenous Students* (2000).

46 *Convention on the Rights of the Child*, art 29.1. Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). At <http://www.unhchr.ch/html/menu3/b/k2crc.htm> (viewed 15 December 2008).

47 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295, UN Doc A/61L.67 (2007), art 14. At [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (viewed 13 September 2008).

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Indigenous leaders, teachers and role models are in short supply in schools across Australia.<sup>48</sup> In 2006, Indigenous teachers with qualifications constituted only 1 percent of teaching staff in all government schools. In Catholic schools they were 0.2 percent.<sup>49</sup> This is not representative of Indigenous people as we are now 2.5 percent of the Australian population.

The state and territory ratios tell a more compelling story. In the Northern Territory, Indigenous people make up over 30 percent of the population while Indigenous teachers represent 3.6 percent of the registered teacher workforce.<sup>50</sup>

The continuing supply of Indigenous teachers is dependent on education graduates. In the period from 2001 to 2006, the number of Indigenous students commencing tertiary study declined.<sup>51</sup> We now have a current problem of short supply and a future problem with fewer Indigenous graduates moving into schools.

As a field of study, education rates second in the choices made by enrolled Indigenous students. For example, in 2006 the top three fields of study for Indigenous students were as follows: 3,028 enrolments in society and culture courses, 1,887 in education courses and 1,430 in health courses.<sup>52</sup> Despite its relative popularity, more needs to be done to increase the supply of teacher graduates to keep pace with the growing Indigenous population.

There are systemic impediments at the national level which have impacted on Indigenous enrolments in higher education. According to the Indigenous Higher Education Advisory Council, the changes to income support (ABSTUDY) in 2000 had a negative impact on Indigenous commencements:

Changes to ABSTUDY with the aim of aligning the means tests and payment rates with those of Youth Allowance and Newstart took effect from 1 January 2000.

There was a sharp decline in higher education Indigenous enrolments in 2000 and ABSTUDY recipient numbers in higher education declined significantly in 2002 and 2003 (DEST, 2004). It is likely that both the means test and the payment rates need urgent reconsideration.<sup>53</sup>

Income support has an impact at the point of entry at the university door. Once enrolled, there are other challenges. Indigenous students' course completion rates fall below those of non-Indigenous students.<sup>54</sup> In order to provide support to Indigenous students, the Australian Government offers grants to higher education institutions to set up Indigenous Higher Education Centres. The Indigenous Higher Education

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48 A Fordham & R Schwab, *Education, Training and Indigenous Futures*, CAEPR Policy Research: 1900–2007, Centre for Aboriginal Economic Policy Research, The Australian National University (2007), p 51–52.

49 Australian Government, *National report to Parliament on Indigenous Education and Training, 2006*, (2008), p 72.

50 Commonwealth, *Parliamentary Debates*, Senate, 12 March 2008, p 636 (Senator Allison, Leader of the Australian Democrats).

51 Indigenous Higher Education Advisory Council, *Ngapartji Ngapartji – Yerra: Stronger Futures, Report of the 3rd Annual IHEAC Conference November 2007* (2008), Appendix C, Figure 2.1.

52 Indigenous Higher Education Advisory Council, *Ngapartji Ngapartji – Yerra: Stronger Futures, Report of the 3rd Annual IHEAC Conference November 2007* (2008), Appendix C, Figure 2.6.

53 Indigenous Higher Education Advisory Council, *Improving Indigenous Outcomes and Enhancing Indigenous Culture and Knowledge in Australian Higher Education*, Report to the Minister for Education, Science and Training (2006), p 16. At: [http://www.dest.gov.au/NR/rdonlyres/10D89BBD-5DB7-4E1D-B634-0F3F2C57DB47/12984/IHEAC\\_Report\\_003\\_WEB\\_wCover\\_pf\\_FINAL.pdf](http://www.dest.gov.au/NR/rdonlyres/10D89BBD-5DB7-4E1D-B634-0F3F2C57DB47/12984/IHEAC_Report_003_WEB_wCover_pf_FINAL.pdf) (viewed 9 December 2009).

54 Australian Government Department of Education, Employment and Workplace Relations, *National Report to Parliament on Indigenous Education and Training, 2006*, at p. 96

Centres offer student services in areas such as study skills, personal counselling and cultural awareness.<sup>55</sup>

The University of New South Wales, Monash University and James Cook University have developed a strategy to recruit and retain Indigenous medical students. While its focus is medical students, the strategy has relevance for other fields of study, including education. *Barawul Yana: Better strategies for the recruitment, retention and support of Indigenous medical students in Australia*, has the following nine goals:

1. To make sure that students who wish to aim for university study make it through to actual university enrolment;
2. To expose Aboriginal and Torres Strait Islander students to a variety of role models or 'heroes' and to inspire them for success;
3. To show students, family members and communities that you can link success at school and university to 'walking in an Aboriginal and Torres Strait Islander world';
4. To show Aboriginal and Torres Strait Islander students that supportive programs at university, Indigenous entry schemes and financial support make studying at university a very real and achievable goal for those students who are ready to make a big commitment to their studies;
5. To work towards family and community understanding and support for kids who want to go to university. To let them know about the range of supports, both financial and cultural, for Aboriginal and Torres Strait Islander students at university;
6. For university programs to work with schools' staff and to plan and train for the development of learning environments that encourage success for Aboriginal and Torres Strait Islander students; to cooperate in providing information about what core skills are needed for students to develop an achievable academic/science language base so that they can move into degrees in higher education, and in particular, in the health sciences;
7. To support the encouragement of students to identify with their Aboriginal and Torres Strait Islander heritage – at a level with which they are comfortable and allow for expression of this identity within a culture of success and achievement;
8. To use appropriate peer and Aboriginal and Torres Strait Islander health professional input as part of the raft of measures used to inform high school students about health professional careers; and
9. To maintain and extend financial and other support for Aboriginal and Torres Strait Islander specific residential programs and workshops.<sup>56</sup>

A particular strength of *Barawul Yana* is that it focuses on inspiring and supporting students at the school level, the community level and the university level. It is a multi-pronged approach. While it provides educational, cultural and financial support to students once they are at university, it also seeks to inspire school students to enter the medical profession as it provides information to their families and communities.

55 Australian Government Department of Employment and Workplace Relations, *Indigenous Support Program (ISP)*. At [http://www.dest.gov.au/sectors/indigenous\\_education/programmes\\_funding/programme\\_categories/support\\_for\\_education\\_providers\\_staff/indigenous\\_support\\_programme\\_isp.htm](http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/support_for_education_providers_staff/indigenous_support_programme_isp.htm) (viewed 9 January 2009).

56 Muru Marri Indigenous Health Unit, Nura Gili, & Rural Clinical School of University of New South Wales, *Barawul Yana: Better strategies for the recruitment, retention and support of Indigenous medical students in Australia* (2007). At [http://www.sphcm.med.unsw.edu.au/sphcmweb.nsf/resources/MMIHU\\_Barawul\\_Yana\\_Com\\_Rep.pdf/\\$file/MMIHU\\_Barawul\\_Yana\\_Com\\_Rep.pdf](http://www.sphcm.med.unsw.edu.au/sphcmweb.nsf/resources/MMIHU_Barawul_Yana_Com_Rep.pdf/$file/MMIHU_Barawul_Yana_Com_Rep.pdf) (viewed 7 January 2009).

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The Australian Indigenous Mentoring Experience (AIME) offers mentors to Indigenous high school students. University students volunteer to do one-on-one mentoring to assist high school students with their school studies.<sup>57</sup> While the mentors are not necessarily Indigenous, the program has the capacity to increase the number of Indigenous school graduates and thereby assist in increasing university admissions. Indigenous and non-Indigenous mentors can be positive role models for high school students, and potentially increase recruitment into the education profession.

Teacher supply is also reliant on measures such as targeted positions for Indigenous applicants. In 2007 the changes to the Community Development Employment Project (CDEP) reduced the number of Indigenous people employed in schools. To mitigate some of the impact, the Australian Government's 2007 Budget provided \$15.1 million over four years for the conversion of up to 200 CDEP positions to education jobs. The changes to CDEP currently affect urban and major regional CDEP positions and we are yet to see whether these measures will be extended to remote regions. The Australian Government is funding each CDEP conversion into part-time employment at \$218.60 per week with up to an additional 30 percent of this wage for on-costs to cover superannuation, long-service leave, payroll processing and the costs associated with creating and filling the new position.<sup>58</sup>

This strategy needs to be closely monitored to see whether it meets this target. At this stage there is limited funding to support training of CDEP workers to upgrade their qualifications. The Australian Government has provided a one-off payment of \$6,000 per position to the host employer to assist with necessary professional development of former CDEP participants. Employers have a fixed time period to the end of 2008 to expend the funds.<sup>59</sup> In principle, the conversion of CDEP positions to fully funded jobs has benefits, but not if the net effect is to reduce the numbers of Indigenous people in the education service industry.

Ideally governments should be supporting Aboriginal and Islander Education Workers (AIEW) to upgrade their qualifications to become fully qualified teachers if this is their goal. This requires resources and targeted programs such as the AIEW mentoring programs which were abolished in the 1990s.

## 2. Employment mentors

Mentors can be beneficial at all levels of the life cycle, particularly at times when people are adjusting to new employment or are in the process of developing new skills. In professional environments, mentor programs work well when they are designed as reciprocal practices whereby the transfer of skills and knowledges occurs in parallel between colleagues. This model assumes that there is something to be learned through collaboration and collective thinking, rather than the formulation of a hierarchical teacher-learner environment.

The *Building Leaders, Building Community* project of *Dare to Lead* is a good example of a collaborative approach to developing leadership in schools. The program's aim is to promote Indigenous school leaders and to support Indigenous parents and carers

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57 Australian Indigenous Mentoring Experience (AIME) website. At <http://www.aimementoring.com/about.htm> (viewed 29 January 2009)

58 Australian Government Department of Education, Employment and Workplace Relations, *Building an Indigenous Workforce in Government Service Delivery (Education) – Program Guidelines*. At [http://www.dest.gov.au/sectors/indigenous\\_education/programmes\\_funding/programme\\_categories/baiw/default.htm](http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/baiw/default.htm) (viewed 9 January 2009).

59 Australian Government Department of Education, Employment and Workplace Relations, *Building an Indigenous Workforce in Government Service Delivery (Education) – Program Guidelines*, at: [http://www.dest.gov.au/sectors/indigenous\\_education/programmes\\_funding/programme\\_categories/baiw/default.htm](http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/baiw/default.htm) (viewed 9 January 2009).

of school students. The project develops alliances between Indigenous Education Workers and school principals with the intention of forging new leadership models and developing connections with the Indigenous families of each school community.<sup>60</sup>

Other mentor programs in the field of education tend to focus on supporting newly employed teachers. The NSW Department of Education and Training has a *Newly Appointed Aboriginal Teacher's Support Program*. As part of the orientation, the new teacher and the school principal attend teaching and learning sessions together and participate in a cultural awareness workshop. At these forums the new teacher has the opportunity to meet other Aboriginal teachers and a support network is encouraged.<sup>61</sup>

The mentor programs for qualified teachers are a teacher retention strategy. The aim is to assist new teachers to take on the considerable responsibilities associated with classroom management and curriculum development.

The mentor role offers benefits for experienced teachers and principals in addition to the benefits offered to the new teacher. Working with colleagues is an opportunity for professional learning. Skills in management, problem-solving and reciprocal learning are all parts of the mentor process. As the Western Australia Education Taskforce found in 2008:

There is a strong case for principals to play a mentoring role. ... all principals have a teaching background and many, in the interests of upholding both their teaching integrity and credibility in the community, would like to play a more active role in classrooms. This should be encouraged. Provided that the supports the Taskforce has recommended to relieve teachers and principals in other areas of their workload are introduced, such mentoring needs to be more systemically applied in schools. Raising the bar in relation to mentoring, and developing the skills and competencies of all educators (especially beginning teachers) in addition to providing opportunities for developing distributed leadership within schools, will enhance succession planning in the education workforce.<sup>62</sup>

The recruitment and retention of Indigenous people in school education is an important priority for current and future generations of Indigenous young people. As future contributors to the social, cultural and economic future of Australia, Indigenous students need every opportunity to maximise their learning and to integrate their knowledge systems. By supporting the employment of Indigenous staff, education employers are fulfilling an obligation to enhance and encourage mutual cultural understandings between Indigenous and non-Indigenous Australians.

Strategies for recruiting Indigenous teachers must begin at the school level. School students will not make career choices unless they are informed about their options. Role models in the form of Indigenous teachers are an essential part of this recruitment strategy as they demonstrate what is possible for aspiring young teachers. This is a first step to encouraging Indigenous young people into the profession. The next step is the support and development of Indigenous teacher trainees at higher education institutions. Finally there is a need to retain and develop Indigenous teachers into school leaders in the workplace.

Making Indigenous education a priority throughout the life-cycle is not something that can be accomplished at the national level. In fact it is not something that can be

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60 Australian Government Department of Education, Employment and Workplace Relations, *Dare to Lead, July 2008 Update*, (2008), p. 6.

61 New South Wales Government, Department of Education and Training, *DET Employment and Support Programs*, <https://www.det.nsw.edu.au/employment/teachnsw/employment.htm> (viewed 6 January 2009).

62 Western Australia Education Taskforce Report, *Public Access – Twomey Report*, Chapter 4, *Leadership and Mentoring* (June 2008). At: [http://sstuwa.org/index.php?option=com\\_content&task=view&id=754&Itemid=566](http://sstuwa.org/index.php?option=com_content&task=view&id=754&Itemid=566) (viewed 19 November 2008).

put into effect at the state or territory levels either. Action must happen at all levels of government and include effort and coordination at the local and regional levels. Schools themselves are crucial to teacher recruitment and retention, though they need the support of governments and non-government bodies.

The school and community partnership models which take up a large part of this chapter, provides the foundation for driving Indigenous recruitment and retention in the field of education. The local or regional groups must be in a position to access the services and funds available to them to enhance Indigenous teacher numbers in all school staffrooms.

### 3. Teacher recruitment strategies

The recruitment of the best and brightest school teachers to schools with large numbers of Indigenous students is a challenge for school principals. One of the main impediments to recruitment is that rural and remote locations are generally not favoured destinations for trained Australian school teachers.

The recruitment difficulties in remote regions are exacerbated by the shortage of teachers world-wide. UNESCO estimates that 18 million new teachers are required if universal primary education is to be achieved by 2015 – achieving one of the *Millennium Development Goals*.<sup>63</sup>

In Australia the teacher workforce is aging and there are not sufficient teacher graduates who are registering to make up for the current and projected teacher retirements. The median age of teachers in Australia has been increasing significantly since the 1980s:

In the 15 years to 2001, the age profile of teachers became older, with the median age of the teacher population rising from 34 years to 43 years over the period. In 2001, around one-quarter (28%) of all teachers were aged less than 35 years, a decrease from around half (51%) in 1986. Over the same period, the number of teachers aged 45 years and over increased from 17% to 44%.<sup>64</sup>

In Australia the teacher shortages have been impacting on regional and remote schools for decades.<sup>65</sup> This has had a disproportionately negative impact on Indigenous students because they are more likely to be in remote locations.

A 2001 Auditor-General's report from Victoria found that over 30 percent of schools that reported teacher shortages were restructuring existing teacher allotments to cover the teacher vacancies. The Victorian study found that over 25 percent of these schools were using teachers without the required subject training or expertise to fill vacancies. This means, for example, that trained English teachers may be filling vacancies in technology or science classes, or teaching remote Indigenous students who actually require teachers qualified with the English as a Second Language (ESL) methodology. The Victorian audit report also found that 15 percent of schools dropped subjects and changed the curriculum to deal with staff shortages.

Teacher recruitment is an essential component of any strategy to improve Indigenous education outcomes. Makeshift strategies to fill teacher vacancies are not acceptable

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63 United Nations Educational, Scientific and Cultural Organisation, *Bali Declaration*, Seventh E-9 Ministerial Review Meeting, ED/EFA/2008/ME/1 REV (2008). At <http://unesdoc.unesco.org/images/0015/001584/158455E.pdf> (viewed 14 October 2008).

64 Australian Bureau of Statistics, *4102.0 – Australian Social Trends* (2003). Commonwealth of Australia, Canberra. At <http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/459c3882fad473a2ca2570eb0083be84!OpenDocument> (viewed 18 November 2008).

65 P Hudson & S Hudson, 'Changing Pre-service Teachers' Attitudes For Teaching In Rural Schools' (August 2008) Vol 33(4) *Australian Journal of Teacher Education*, Queensland University of Technology p 67. At <http://ajte.education.ecu.edu.au/issues/PDF/334/Hudson.pdf> (viewed 18 November 2008).

in a country that has the resources and the commitment to provide quality education to the next generations.

Effective recruitment to rural and remote locations requires strategic system-wide approaches. The approaches need to make teaching in these locations attractive in terms of conditions and salaries, but they also need to focus on increasing information about remote Australia. Remote Australia is largely unknown by the majority of Australians and this lack of knowledge or experience is a factor which prevents teacher graduates from considering a remote posting. It stands to reason that teacher graduates would be unwilling to commit themselves to an unknown destination.

There is much that can be done to improve teacher recruitment. One first step is the development of strong and continuous relationships between teacher training institutions and education employers.

#### 4. Placement of trainee teachers in remote schools

There is real benefit in giving trainee teachers the opportunity to hear first-hand stories from remote teachers during their teacher training. Those teachers who have worked in remote schools can provide a unique insight into life and learning in the outback and alert students about teaching opportunities outside of their current realm of experience.

Government and non-government education providers are best positioned to coordinate the flow of information from schools to trainee teachers through teacher training institutions. It is in the interests of education providers to be constantly updating training institutions about positions as they become available in hard-to-fill locations or hard to fill subject areas. Providers and training institutions can work collaboratively to match final year graduates with teacher vacancies. Leaders in Indigenous Medical Education (LIME) is an example of a network that provides input into medical education and curricula, and assists in developing best practice in the recruitment and retention of Indigenous medical students. LIME assists in building multi-disciplinary and multi-sectoral linkages for the benefit of Indigenous health as well as providing review, advocacy and professional development functions in the health industry.<sup>66</sup> There is scope to develop a similar network for Indigenous education that acts on recruitment, retention and professional development between the training institutions and the education industry.

Information alone is not enough to improve teacher recruitment. There is considerable anecdotal evidence of teachers leaving remote schools after a matter of days or weeks after experiencing culture shock or a mismatch between their expectations and reality of a remote posting. It is difficult to know the extent of this problem because education departments do not make this information public. One way to avoid this situation is to give trainee teachers opportunities to experience remote schools through their teaching placements.

Teacher placements or practicums provide opportunities for assessing workplace environments before making a commitment to employment. It is a daunting process for a first-year graduate teacher to agree to a remote teaching position if they have had no prior experience in these locations. It does a disservice to the school to send an ill-prepared neophyte teacher to a school where the culture and the environment are completely unknown. Coordination and collaboration between education employers and training institutions is essential to ensure that interested trainee teachers have opportunities for remote teaching placements before they graduate.

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66 Leaders in Indigenous Medical Education (LIME) website. At <http://www.limenetwork.net.au/> (viewed 29 January 2009).

The practicum allows the school and the teacher to decide whether they are well suited. Those providers who have managed teacher recruitment in this way have found that this strategy has a high success rate of teacher employment at the completion of the trainee teacher's studies. The tried-and-tested approach is beneficial to the teachers and the school as it ensures there is a match between mutual expectations.

While there are a number of good projects that provide trainee teachers with teaching experiences in remote locations, there is no consistency across jurisdictions and education providers.

The Western Australian Department of Education and Training and the WA Chamber of Minerals and Energy have developed the Student Teacher Rural Experience Program (STREP) which provides financial support to student teachers undertaking their final practicum in remote or rural schools.

STREP assists with return travel costs and a weekly stipend for the duration of the practicum. Certain schools and areas are specified and STREP applicants need to satisfy a number of selection criteria, including an intention to work at a rural or remote school after graduation.<sup>67</sup>

A review of the STREP program found that three-quarters of participants were willing to take regional or remote teaching appointments as a result of the program. The review found that:

Participation in STREP, according to the responses to this particular survey, seems to be providing pre-service teachers with authentic regional experiences, thereby ensuring the development of realistic expectations of living and working in country towns.<sup>68</sup>

## 5. Teacher scholarship schemes

Most states and territories provide scholarships for teachers in subject areas or locations where the demand is high. For example, the Queensland Department of Education, Training and the Arts provides scholarships to meet the labour market demands of the teacher workforce through the following:

- professional development scholarships for registered teachers wanting to upgrade qualifications through Graduate Certificate courses; and
- employment scholarships for registered teachers to complete a Graduate Certificate courses in specialised areas in which they have not worked previously.<sup>69</sup>

Victoria provides competitive scholarship programs for trainee teachers for the following:

- schools with recruitment difficulties; and
- subjects specialties where there is high demand and few teachers.

In NSW, the Department of Education and Training has an *Aboriginal Teacher Education Scholarship Mentor Program*. It aims to provide opportunities for Aboriginal people to train as teachers. In 2008, up to 60 scholarships were on offer for Aboriginal people undertaking primary or secondary teacher education programs in New South Wales.

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67 G Lock, 'Preparing Teachers for Rural Appointments: Lessons from Australia', (Winter 2008), *The Rural Educator*. At [http://findarticles.com/p/articles/mi\\_qa4126/is\\_200801/ai\\_n25139914](http://findarticles.com/p/articles/mi_qa4126/is_200801/ai_n25139914) (viewed 7 January 2009).

68 G Lock, 'Preparing Teachers for Rural Appointments: Lessons from Australia', (Winter 2008), *The Rural Educator*. At [http://findarticles.com/p/articles/mi\\_qa4126/is\\_200801/ai\\_n25139914](http://findarticles.com/p/articles/mi_qa4126/is_200801/ai_n25139914) (viewed 7 January 2009).

69 Queensland Department of Education, Training and the Arts (DETA), *Scholarships for Teachers*, [http://education.qld.gov.au/staff/development/scholarships/teachers/docs/scholarships\\_for\\_teachers.html](http://education.qld.gov.au/staff/development/scholarships/teachers/docs/scholarships_for_teachers.html) (viewed 12 November 2008).

The NSW Scholarship holders are supported through a range of strategies including:

- being supported by a mentor throughout the period of teacher training. Relief funding is provided for mentors to support scholarship holders. Advisory guidelines are provided to scholarship holders and mentors which set out their roles and responsibilities;
- publication of a quarterly newsletter providing updates on key events;
- personalised support through regular telephone and email contact and regular on-campus university visits by Aboriginal Policy Officers.<sup>70</sup>

## 6. Professional development and industry release

Like other professionals, teachers benefit from opportunities to extend their knowledge through training, development and new workplace experiences. Teachers who undertake targeted, high quality professional development are in a position to provide benefit to their students and their schools. Industry release and professional development programs enable teachers to keep pace with rapidly changing technological workplaces and can have the added value of being retention strategies.

In recent years however, the number of teacher industry release programs have decreased. For example, the Victorian *Teacher Release to Industry Program* (TRIP) was discontinued in 2003, after operating since 1991. The TRIP program offered teachers full-time, forty week positions within selected enterprises. These placements exposed teachers to new workplace environments, giving them experiences which would enable them to link their students to structured workplace learning opportunities in future.

The industry release programs that currently exist for Australian teachers are usually short-term, and often limited to placements for Career Teachers. For example, the Northern Territory offers places for secondary teachers to be involved in a ten day Teacher Release Program through the *Group Training Northern Territory Foundation*. Programs like this one assist in developing links between school and industry and vocational education and training.<sup>71</sup>

While industry release programs are expensive, they are also highly valued by teachers. The Victorian TRIP program provided 50 places annually at a cost of \$1 million to the Department and it had many more applicants than it had places. It also maintained high retention of teachers after the placements. For example, in 2000, only 2 percent of teachers relocated to industry positions after undertaking TRIP placements.<sup>72</sup>

Given the cost and the value of these programs, it may be possible to limit these programs so that they are exclusively available to regional and remote teachers who have spent a period of time in these schools. In this way it becomes both an incentive to teach in these locations and a potential retention strategy.

One way to provide industry release for Indigenous teachers could be through utilising the Australian Employment Covenant (AEC). The AEC involves the placement and long term retention of 50,000 Indigenous people into 'Covenant Jobs'. It is a three way commitment that involves:

70 New South Wales Government, Department of Education and Training, *DET Employment and Support Programs*, <https://www.det.nsw.edu.au/employment/teachnsw/employment.htm> (viewed 6 January 2009).

71 Group Training Northern Territory, *Teacher Release Program*, <http://www.gtn.t.com.au/pages/Teacher-Release-Program.html> (viewed 18 November 2008).

72 Victorian Auditor-General's Office, *Teacher Work Force Planning*, Performance Audit (2001), p 103–104. At [http://archive.audit.vic.gov.au/reports\\_par/agp73cv.html](http://archive.audit.vic.gov.au/reports_par/agp73cv.html) (viewed 18 November 2008).

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- Employers formally guaranteeing job-ready and training-ready Indigenous Australians employment, job specific training, post-placement and individualised mentor support;
- The Australian Government facilitating the identification, recruitment and preparation of Indigenous job seekers for successful placement in the workforce; and
- Indigenous Australians committing to appropriate employment preparation and training and remaining in employment once placed.

Connection to the AEC may provide a sustainable industry release option for Indigenous teachers as a minimum.

## 7. Remote allowances

All Australian jurisdictions provide some form of allowance for teachers who are appointed to regional and remote schools. The allowances are usually calibrated by remoteness or isolation category and other subsidies are also provided such as relocation reimbursement or reimbursement for the costs of travel to home for holiday periods. In some instances, teachers are provided with reduced rent or rent-free housing and subsidised utilities.

In Western Australia public sector teachers are paid an allowance loading on their base salary as well as free rent, subsidised utilities, travel reimbursement and additional leave after a number of years of service. Remote teachers are also granted permanency after a two year remote posting.<sup>73</sup> However, a 2008 evaluation of the incentives found that remote teacher allowance loadings are comparatively lower than those paid to other WA Government sector employees.<sup>74</sup>

Teacher salaries and allowances are a reflection on the esteem in which the profession is held. This in turn impacts on the view of the profession from potential recruits and from those within the workforce. A Western Australian Taskforce into public education found:

It is the perception of the education sector and the broader community that remuneration for all professionals in education, but particularly teachers, is low. It is this perception which consequently impacts on the status of teaching as a profession and the supply (in numbers and quality) of the workforce.

Submissions received by the Taskforce raised the following concerns relating to salaries and allowances:

- relative salary is not on par with other professions;
- allowances do not cover the cost of living, particularly in regional areas;
- relatively poor salary and allowances lower the status of the profession;
- lack of equity in allowances and conditions for staff across the education sector; and
- lack of equity in allowances, incentives and conditions, particularly in regional areas, when compared to other Government sector employees.<sup>75</sup>

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73 Western Australia Department of Education and Training, *Remote Teaching Service*, <http://www.det.wa.edu.au/teachingwa/detcms/teachingwa/teaching-wa/shared-content/remote-teaching-service/remote-teaching-service.en?oid=MultiPartArticle-id-1399156&> (viewed 19 November 2008).

74 Western Australia Education Taskforce Report, *Public Access – Twomey Report*, Chapter 1, *Remuneration*, (June 2008). At [http://sstuwa.org/index.php?option=com\\_content&task=view&id=754&Itemid=566](http://sstuwa.org/index.php?option=com_content&task=view&id=754&Itemid=566) (viewed 19 November 2008).

75 Western Australia Education Taskforce Report, *Public Access – Twomey Report*, Chapter 1, *Remuneration*, (June 2008). At [http://sstuwa.org/index.php?option=com\\_content&task=view&id=754&Itemid=566](http://sstuwa.org/index.php?option=com_content&task=view&id=754&Itemid=566) (viewed 19 November 2008).

## 8. Teacher retention and living conditions

... Research indicates that, of those variables potentially open to policy influence, factors involving teachers and teaching are the most important factors in student learning...<sup>76</sup>

In order to retain good teachers in remote schools, we have to ensure that they are appropriately housed and supported in what can be challenging environments. Poor infrastructure such as poor teacher houses and poor school facilities can have a negative impact on teacher retention. Overcrowding of existing teacher houses can lead to tension in small school environments. Small communities can be hothouse environments so it is important that teachers are not forced to share with each other.

The cost of maintaining and building infrastructure in non-urban regions can be considerable for governments. If additional houses are not budgeted for by governments, schools can be understaffed because governments cannot fund additional teacher houses within required timeframes. This in turn puts pressure on existing staff in small schools.

Many of the services we take for granted in urban areas are not available in remote communities. Access to professional development is restricted in remote locations and internet connections and speed may also impede access to online resources.

The logistics of infrastructure maintenance can also mean long waiting periods to fix faulty plumbing or to mend wear and tear. If air-conditioning or heating breaks down in remote communities it can be weeks and sometimes months before service personnel visit the community to carry out maintenance. In extreme weather conditions this can place strain on teaching staff.

The Commonwealth, state and territory governments must make teacher housing a funding priority, starting with jurisdictions where there is a large backlog of communities waiting for teacher houses to be built or upgraded.

## 9. Discriminatory housing policy for Indigenous teachers

In Queensland and the Northern Territory, Indigenous Assistant Teachers and qualified Indigenous teachers living and teaching in their home communities are not eligible for subsidised teacher housing.<sup>77</sup> In order to be eligible for housing a teacher has to be transferred to a community that is not their home community.

All non-Indigenous teachers who relocate to take up teaching positions are eligible for houses. However, Indigenous employees who choose to work in their home communities are not. In practice, this policy discriminates against Indigenous teachers and acts as a disincentive for qualified Indigenous teachers to work in their home communities.

Remote Assistant Teachers generally have no choice except to work in their home communities because their role is to teach and interpret in the local language and build

76 P McKenzie & P Santiago, *Teachers Matter, Attracting, Developing and Retaining Effective Teachers*, Organisation for Economic Cooperation and Development, (2005), p 26. At [http://books.google.com/books?id=6A7cM-fsA7QC&pg=PA26&lpg=PA26&dq=of+those+variables+potentially+open+to+policy+influence,+teachers+and+teaching+are+the+most+important+factors+in+student+learning&source=web&ots=XbJum2RaK6&sig=C7Q3ycLVpZMbLcJ9UY3ebFZPIF0&hl=en&sa=X&oi=book\\_result&resnum=1&ct=result#PPA28,M1](http://books.google.com/books?id=6A7cM-fsA7QC&pg=PA26&lpg=PA26&dq=of+those+variables+potentially+open+to+policy+influence,+teachers+and+teaching+are+the+most+important+factors+in+student+learning&source=web&ots=XbJum2RaK6&sig=C7Q3ycLVpZMbLcJ9UY3ebFZPIF0&hl=en&sa=X&oi=book_result&resnum=1&ct=result#PPA28,M1) (viewed 7 January 2009).

77 Australian Education Union, 'Teacher Housing for Indigenous Teachers in Discrete Indigenous Communities', (Winter 2008), Issue 4 *Our Voices Our Vision – Aboriginal and Torres Strait Islander Workers in Public Education*, p 1. At <http://www.aeufederal.org.au/Publications/ATSI/News/Winter2008.pdf> (viewed 19 November 2008).

the language bridge to English. Assistant Teachers hold the corporate knowledge and provide a vital link to families in each community. As residents of the community they are the consistent influence in the school environment. Many Assistant Teachers have been in the same school for decades, sharing the corporate knowledge as the non-Indigenous teachers come and go.

The effect of the government housing policies is to financially disadvantage Indigenous teachers. Given that remote housing is usually offered to non-Indigenous teachers free of rent and with subsidised utilities, the financial disadvantage for Indigenous teachers can be significant. In addition, many Indigenous communities have problems with over-crowded housing and so Indigenous teachers are further disadvantaged by having to live in circumstances which may not be conducive to healthy living.

For many years Indigenous teachers in Queensland and the Northern Territory have asked government departments to provide them with houses. In situations where there is limited teacher housing, a potential solution is for education departments to lease houses from Shire Councils or other housing authorities. The houses can then be provided to Indigenous Teachers (both fully qualified teachers and Assistant Teachers) rent free or rent subsidised and the lease can revert to the Shire when local teachers retire or leave the teaching service.

Maintaining qualified Indigenous teachers and Assistant Teachers in remote schools is vital for the successful operation of remote schools. They provide a language link for children in the early years of schooling so that the school is not a totally foreign environment. They also provide a role model for the Indigenous students; demonstrating the purpose of education and a potential employment pathway for aspiring Indigenous youth.

## 10. Marketing incentives

Remote teaching must become an attractive option for Australian teachers if we are to improve outcomes for these students. The marketing of remote teaching, including the details of allowances and subsidies is a way to increase competition for these places – with the ultimate goal of providing school principals with a pool of well qualified and appropriate applicants.

There are many actions that can be taken to increase the profile of remote teaching and publicise the benefits of remote education contexts. Information about incentives, scholarships and other strategies should be widely available and teacher institutions and governments can do more to counteract the negative profile that remote Australia has been given by some media. Consideration should be given to promoting remote teaching along the lines of the campaign run by the Australian Defence Force. Television and print media advertising reaches a wide audience and has the potential to suggest and promote vocations and locations which may have been hitherto unknown by potential recruits.

The McKinsey report shows that the quality of a school cannot exceed the quality of its teachers, so it is important to begin by attracting and employing the best. In countries such as Finland and Singapore, teaching is a high-status profession and generous funds have been made available for pre-service teacher training to provide an incentive to attract the best.<sup>78</sup>

There is a definite imperative for government and non-government education providers to act on remote recruitment and retention strategies for Indigenous and non-Indigenous

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78 Western Australia Education Taskforce Report, *Public Access – Twomey Report*, Chapter 4, *Leadership and Mentoring* (June 2008). At [http://sstuwa.org/index.php?option=com\\_content&task=view&id=754&Itemid=566](http://sstuwa.org/index.php?option=com_content&task=view&id=754&Itemid=566) (viewed 19 November 2008).

teachers. As the most important asset to the school environment, education providers should ensure they attract the best, brightest and most appropriate teachers to remote schools where the education challenges are greatest.

### Case Study 5: Minyerri Community School – Good teachers and school leaders

The numbers of students enrolling at Minyerri Community School is growing every year and most of the students are attending school every day. Minyerri wasn't always such a thriving school community, but things have changed in recent years. The school principal said this about the school:

When our family first arrived in 2001 we lived in the staff room. We had 80 students enrolled and a 55 percent attendance rate. We now have 165 enrolled and over 85 percent attendance.<sup>79</sup>

Good student attendance and growth in school enrolments are indications of a successful school. Much of the success of this school has been attributed to good relationships with the community; good Indigenous and non-Indigenous leadership; and the longevity of employment of some key school staff:

The trick is relationships, a cultural understanding – developed over many years. I got to know a lot of the men through the footy, and the women through the school.<sup>80</sup>

The Minyerri community is located approximately 270 Km southeast of Katherine. It has a population of approximately 500 people. It is accessible by road from Katherine and the trip takes about three hours. A permit is required for non-Aboriginal people to enter the community.

The school is staffed by a principal, nine qualified teachers and four assistant teachers. A number of tutors also work at the school and two Inclusion Support Officers work with children with disabilities. Early in 2003 the school opened four new classrooms to cater for increased enrolments and secondary school students:

At first the secondary kids were on the school balcony. Last January our new \$1.5 million secondary complex opened and our school now includes science, IT and home economics rooms and three classrooms.<sup>81</sup>

The school principal is well known in the region, he has been there for 20 years. In the late 1980s and 1990s he was principal of schools in the nearby communities of Hodson River and Ngukurr. He taught several of the parents of the children currently at Minyerri. The principal is married to a Ngandi woman whose sisters are married to Alawa men – she has strong family ties to Minyerri. She is also a teacher at the school. They have been at Minyerri for more than seven years. As school leaders they have the benefit of speaking the local language. There are other teachers who have been at the school for a number of years:

79 Principal Minyerri School, Northern Territory Department of Community Services, *Kids Tracks, A newsletter about Territory Aboriginal child and family wellbeing services*, (2006), p. 32. At [http://www.nt.gov.au/health/docs/newsletter/KidsTracks\\_2006Feb.pdf](http://www.nt.gov.au/health/docs/newsletter/KidsTracks_2006Feb.pdf) (viewed 21 January 2009).

80 Principal Minyerri School, Northern Territory Department of Community Services, *Kids Tracks, A newsletter about Territory Aboriginal child and family wellbeing services*, (2006), p. 32. At [http://www.nt.gov.au/health/docs/newsletter/KidsTracks\\_2006Feb.pdf](http://www.nt.gov.au/health/docs/newsletter/KidsTracks_2006Feb.pdf) (viewed 21 January 2009).

81 Principal Minyerri School, Northern Territory Department of Community Services, *Kids Tracks, A newsletter about Territory Aboriginal child and family wellbeing services*, (2006), p. 32. At [http://www.nt.gov.au/health/docs/newsletter/KidsTracks\\_2006Feb.pdf](http://www.nt.gov.au/health/docs/newsletter/KidsTracks_2006Feb.pdf) (viewed 21 January 2009).

We have a core of teachers that have been here two, three, four years. My wife and I have been here nearly eight years. I think that continuity sort of helps too as they get to know you as a person and as a teacher.

That continuity is basically the pulse of a good remote school. I mean given the average rate in a remote school is seven months, we do very, very well in keeping our teachers here.<sup>82</sup>

The deputy principal reinforced the views of the principal saying: [We are the] 'only school in remote with long staying teachers'.<sup>83</sup> She described the principal's leadership as being very important to the success of the school:

The principal Neil has a good attitude to the students and staff – [he has] charisma [he likes] joking and having fun yet is firm when discipline is required. Attendance fell to low when he went away on holidays and the parents, community and students were happy when he returned. Family, kids feel safe at the school – parents support kids to go to school, kids are disciplined but still shown that the school supports them at all times – kids don't get away with bad behaviour – Neil has a good relationship with the families – he knows and understands the culture and the family connections and everyone likes him.<sup>84</sup>

An Indigenous teacher at the school described the importance of having secondary education at Minyerri so the students are able to stay in the home community if they prefer:

Quite often the kids are in boarding schools and most of them last one term. They miss home and family support and suffer the loneliness and being away from their home and school.<sup>85</sup>

The strong school team at Minyerri support students to take up boarding opportunities, they also offer students the opportunity to study in their home communities.

## 11. Summary of issues: The best and brightest teachers

- The *quality* of school teachers is the most important factor impacting on student learning outcomes;
- Indigenous teachers and leaders show Indigenous students that school is relevant and reflective of their world;
- Changes to income support (ABSTUDY) in 2000 have had a negative impact on Indigenous enrolments in higher education which in turn has the potential to impact on the number of qualified Indigenous teachers and future school leaders;
- Mentors assist in facilitating educational and professional achievement and can be role models for Indigenous students and teachers;

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82 C. Curtain, , *Rural Report for Outback NT*: (ABC Rural Report, 2 April 2008). At: <http://www.abc.net.au/rural/regions/content/2007/s2205994.htm> (viewed 21 January 2009).

83 Deputy Principal Minyerri School, *Email correspondence with the Australian Human Rights Commission*, 20 November 2008.

84 Deputy Principal Minyerri School, *Email correspondence with the Australian Human Rights Commission*, 20 November 2008.

85 Teacher Minyerri School, *Email correspondence with the Australian Human Rights Commission*, 20 November 2008.

- Teacher shortages have a disproportionately negative impact on remote schools. The shortages mean that teachers are teaching outside of their subject expertise. Teachers who are qualified in English as a Second Language methodology are required for many remote schools;
- Placing trainee teachers in remote schools can assist with appropriate recruitment of graduates. Subsidised remote placements should be available for (suitably assessed) trainee teachers in all states and territories;
- Teacher release programs can improve teacher retention because they give teachers opportunities to enhance and refresh their skills outside the classroom;
- Industry release for Indigenous teachers could be linked to the Australian Employment Covenant;
- The quality and availability of teacher housing impacts on teacher retention;
- Teacher housing policy in Queensland and the Northern Territory discriminates against Indigenous teachers. A potential solution to housing shortages is for governments to lease houses from housing authorities for the duration of the teachers' tenure at the remote school; and
- There is potential for governments to undertake marketing activity to promote and emphasise the important status of remote teaching.

## Part 5: Early childhood education

.....

Let us resolve today to begin with the little children, a fitting place to start on this day of apology for the stolen generations.

Let us resolve over the next five years to have every indigenous four-year-old in a remote Aboriginal community enrolled in and attending a proper early childhood education centre or opportunity and engaged in proper pre-literacy and pre-numeracy programs.<sup>86</sup>

The above extract from Prime Minister Rudd's Apology to the Stolen Generations makes unequivocal the Government's commitment to early childhood education for remote Indigenous children.

The Australian Government's Office of Early Childhood Education and Child Care further commits the Government to a standard of early childhood education and child care by declaring an intention to 'work towards providing the leadership to achieve a nationally-consistent system of quality, accessible and affordable early childhood education and child care for all Australian families.'<sup>87</sup>

I welcome the Government's commitment to remote Indigenous children. Australia has not been a big spender on early childhood education compared with other OECD countries.<sup>88</sup> Remote Indigenous children have been disproportionately affected by this under-expenditure. Preschool attendance data confirms that children living in very remote areas are less likely to attend preschool than children in other locations and Indigenous children in these areas have lower participation rates than non-Indigenous children.<sup>89</sup>

If we are to close the gap between the learning outcomes of Indigenous and non-Indigenous young people, we must provide quality learning options for Indigenous preschool aged children in all locations.

In December 2007, the Council of Australian Governments (COAG) agreed to a partnership between the Commonwealth, state and territory governments to pursue substantial reform in the areas of education, skills and early childhood development.

To this end, the Department of Education, Employment and Workplace Relations is overseeing the development of the National Quality Framework for Early Education and Care. Key areas of development for the Framework are quality standards and an enhanced regulatory framework, an Early Years Learning Framework and the development of a capable and responsive workforce.<sup>90</sup>

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86 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, (The Hon Kevin Rudd MP, Prime Minister) at [http://www.aph.gov.au/house/Rudd\\_Speech.pdf](http://www.aph.gov.au/house/Rudd_Speech.pdf) (viewed 13 January 2009).

87 Australian Government, Department of Education, Employment and Workplace Relations, *Office of Early Childhood Education and Child Care*, <http://www.deewr.gov.au/EarlyChildhood/OfficeOfEarlyChildhood/Pages/default.aspx> (viewed 13 January 2009).

88 M Harrington, 'Preschool education in Australia', (2008), *Background Note*, Australian Government Parliamentary Library. At [http://www.aph.gov.au/library/pubs/BN/2007-08/PreschoolEdAustralia.htm#\\_Toc198010805](http://www.aph.gov.au/library/pubs/BN/2007-08/PreschoolEdAustralia.htm#_Toc198010805) (viewed 15 January 2009).

89 N Biddle, 'Indigenous Australians and preschool education: Who is attending?' in M. Fordham and R.G. Schwab (eds), *Education, Training and Indigenous Futures, CAEPR Policy Research: 1990-2007, Research Summaries* (2006), Reference No. 26 p. 2. At <http://www.anu.edu.au/caepr/educationfutures/ref026.pdf> (viewed 9 December 2008).

90 Australian Government Department of Education, Employment and Workplace Relations, *National Quality Framework for Early Education and Care* [http://www.dest.gov.au/sectors/early\\_childhood/policy\\_initiatives\\_reviews/coag/The\\_Early\\_Years\\_Learning\\_Framework.htm](http://www.dest.gov.au/sectors/early_childhood/policy_initiatives_reviews/coag/The_Early_Years_Learning_Framework.htm) (viewed 13 January 2009).

The increased involvement of the Australian Government in early childhood provision will provide much needed assistance; especially in terms of remote services though I would like to see a specific focus on remote infrastructure.

Since 1986 preschool education has been the sole responsibility of the states and territories. Up until 2007, the Australian Government has not had a role in early childhood education, except to provide supplementary funding for Indigenous preschool services. To date the supplementary funding has supported programs rather than infrastructure. The supplementary funding for preschool education was estimated at \$13.8 million for 2008. To receive Supplementary Recurrent Assistance (SRA) a preschool must have five or more Indigenous students or have formed a cluster with other preschools to meet the enrolment eligibility requirements. Funding is only provided to licensed or registered preschools with accredited programs.<sup>91</sup>

Providing universal early childhood learning services in remote communities will require large infrastructure investments in future. I am pleased to see that the Prime Minister favours integrated models for early childhood services which include services for parents as well as for children.<sup>92</sup>

## 1. Multi-purpose early childhood centres

There is work in progress to build multi-purpose early-childhood infrastructure in Australia. In 2006, the Queensland Government committed \$32 million over four years to develop integrated Early Years Centres where parents can access early education services, child care, child health services, parenting programs and other family support at one location. Two centres are now operating in Queensland with planning underway for further centres.<sup>93</sup>

There is international evidence that supports the benefits of integrated models. Similar multi-purpose facilities have been developed by First Nations groups in Canada. First Nation organisations describe the facilities as a ‘hook for mobilising community commitment and... a hub for the gradual introduction of inter-relating, inter-sectoral programs.’<sup>94</sup>

The development of facilities that allow for the co-location of mothers or carers (who are participating in training) with their children (who are participating in early childhood learning) assists in the broader purpose of community development. Again, international studies demonstrate that integrated mother and child activity has the benefit of promoting maternal and child health and development.<sup>95</sup>

Multi-purpose early childhood facilities can include combinations of the following features. Two classroom sized spaces, a withdrawal area for childcare, industrial-sized kitchen facilities, bathroom and toilet amenities, spaces for staff, storage spaces for equipment and an outdoor play area. The classrooms can be used for different

91 M Harrington, ‘Preschool education in Australia’, (2008), *Background Note*, Australian Government Parliamentary Library. At [http://www.aph.gov.au/library/pubs/BN/2007-08/PreschoolEdAustralia.htm#\\_Toc198010805](http://www.aph.gov.au/library/pubs/BN/2007-08/PreschoolEdAustralia.htm#_Toc198010805) (viewed 15 January 2009).

92 K. Rudd, *Press conference with Maxine McKew*, Sydney Day Nursery, Sydney, (Press conference, 17 April 2008). At [http://www.pm.gov.au/media/Interview/2008/interview\\_0204.cfm](http://www.pm.gov.au/media/Interview/2008/interview_0204.cfm) (viewed 15 December 2008).

93 Queensland Government, *Queensland Closing the Gap Report: 2007/08, Indicators and Initiatives for Aboriginal and Torres Strait Islander Peoples* (2008), p. 22. At <http://www.atsip.qld.gov.au/partnerships/partnership-qld/documents/closing-the-gap-report.pdf> (viewed 15 January 2009).

94 J Ball, *Indigenous early childhood development programs as ‘hook’ and ‘hub’ for inter-sectoral service delivery*, School of Child and Youth Care, University of Victoria, Canada (2004), p 4–5. At <http://www.ecdip.org/docs/pdf/conf/hookhubintersector.pdf> (viewed 6 August 2008).

95 M Lyytikäinen, N Jones, S Huttly & T Abramsky, *Childhood poverty, basic services and cumulative disadvantage: An international comparative analysis*, Young Lives, Save the Children UK (2006), p 24–27. At [http://www.younglives.org.uk/pdf/publication-section-pdfs/working-paper-pdfs/wp33\\_poverty-services.pdf](http://www.younglives.org.uk/pdf/publication-section-pdfs/working-paper-pdfs/wp33_poverty-services.pdf) (accessed 14 January 2009).

preschool age levels as well as for vocational education for adult members of the community. The industrial kitchen area provides opportunities for small enterprises as well as being a site for vocational training programs in hospitality.

Many remote communities have no purpose-built early childhood facility. Early childhood learning happens in existing buildings such as storage areas, school classrooms, school verandas and council spaces. In some instances there is no facility and no place for the storage of learning materials, so activity boxes are brought out periodically by visiting teachers. This is not ideal, and where populations warrant facilities, governments should be working towards addressing the infrastructure shortages.

## 2. Mobile preschools

Mobile preschools programs are a method for delivering early childhood learning opportunities to remote children where there is no facility or educator in the community or the region. Mobile preschools are currently operating in a number of states and territories. They provide specialist teachers who operate across numerous sites, primarily to supplement existing local early childhood services through the provision of educational resources such as learning programs, books, toys and other equipment.

A 'hub and spoke' model is the most common form of mobile preschool service delivery. A qualified preschool teacher takes trips from a larger remote 'hub' community to the smaller satellite Homelands in the vicinity of the main community. At the beginning of the school term the teacher draws up a travel schedule outlining the timetable of community visits. Teacher Assistants in the communities know when the visiting teacher will arrive.

Teachers travel between sites in off-road vehicles or light aircraft. Communities that are closer to the hub can be visited within a day and are visited more frequently than outlying communities. Some places are as far away as a six hour drive and these visits require a four day trip. The teacher is only able to visit distant communities about once every two to three weeks. There is rarely any accommodation in outlying communities and the visiting teacher will often camp in a swag. These places rarely have permanent equipment so the learning resources are brought out with the visiting teacher. This is problematic for the Teacher Assistant who may have very limited materials in between visits from the mobile teacher.

Mobile services are expanding. In 2008 the Northern Territory Minister for Employment, Education and Training announced six new services. Under the Northern Territory model, teachers make regular visits to up to five remote community sites to provide support to local Indigenous Teacher Assistants who deliver the daily preschool activities.<sup>96</sup> The Teacher Assistants provide the foundation for the program because they are the constant influence in the lives of the students. The visiting teacher designs the program while the Teacher Assistant provides the hand-on management of the children as well as interpreting from the local Indigenous language into English when required.

A particular problem with the model as it operates in the Northern Territory is that up until recently there has been no training or formal mentoring for Teacher Assistants. While some training was provided in 2008, not all Teacher Assistants were able to take part. Training and professional learning is an essential for all educators. It ensures quality control of service delivery. Given the high importance of early childhood learning

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96 Marion Scrymgour, Northern Territory Minister for Employment, Education and Training, 'Mobile Preschools Closing the Gap', (Media release, Thursday 8 May, 2008).

to a child's development, it is imperative that government departments make Teacher Assistant training a priority.

The importance of the Teacher Assistant cannot be underestimated. Visiting qualified preschool teachers have reported that if the Teacher Assistant is sick or does not attend the scheduled session, the students will not attend, even if the visiting teacher is present.<sup>97</sup>

There are some advantages to the mobile model. Some families in Homeland communities travel frequently and therefore the numbers of preschool-aged children can vary from time to time. The mobile model has flexibility and it can be responsive to movements in populations. In some instances a service may not be necessary for a period of time because Homeland residents periodically leave their communities to access services or participate in ceremony.

The other main advantage of the mobile model is that it provides a preschool service to very small groups of children where the population sizes are so small that that they do not warrant a full-time teacher. Many of these children would have no other exposure to pre-literacy and numeracy activities in English without a mobile service. However mobile preschools are not a substitute for permanent services and should not be used as an alternative where there are sufficient numbers to necessitate a permanent preschool service.

### 3. Intensive support playgroups

Another flexible early childhood service is the Commonwealth Government's Intensive Support Playgroup. This initiative is designed to engage vulnerable families with young children in children playgroup situations. The program employs two early childhood workers to run playgroups and a family support worker to provide intensive support to families experiencing significant disadvantage or crisis. The playgroup is able to move to locations within a defined area to support children and communities on a needs basis. Workers will usually visit each location for two to three hours, once or twice a week. The workers use a vehicle stocked with play and craft equipment to bring playgroups to where parents or caregivers and their children live, as lack of transport is often a barrier to participation.<sup>98</sup>

Funding is available through a tender process. Each Intensive Support Playgroup receives up to \$200,000 a year as well as up to \$100,000 in start-up funding. This provides funds for community consultations and the purchase of playgroup equipment and a vehicle. Mobile Intensive Support Playgroups have recently been set up in the town camps of Katherine and Tennant Creek.<sup>99</sup>

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97 Preschool Teacher Katherine Region, Northern Territory, Telephone interview, (3 November 2008)

98 Australian Government, Families, Housing, Community Services and Indigenous Affairs, *Information about Intensive Support Playgroups*. At [http://www.fahcsia.gov.au/indigenous/epif/model\\_information\\_intensive/Model\\_Information\\_Intensive\\_Support\\_Playgroups.rtf](http://www.fahcsia.gov.au/indigenous/epif/model_information_intensive/Model_Information_Intensive_Support_Playgroups.rtf) (viewed 15 January 2009).

99 Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Defence Science and Personnel, 'New playgroups to benefit Indigenous families' (joint media release, 2 May 2008). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/newplaygrps\\_indigfam\\_2may08.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/newplaygrps_indigfam_2may08.htm) (viewed 15 January 2009).

## 4. Indigenous staff

Evidence demonstrates that employing an Indigenous preschool worker has a positive effect on the participation rates of Indigenous children in early childhood education.<sup>100</sup> It is essential therefore, that the Australian Government's early childhood workforce framework includes plans to recruit and retain Indigenous preschool workers. Currently the Australian Government has committed to increasing the Australian childcare workforce by:

- additional early childhood education university places each year from 2009, increasing to 1,500 places by 2011;
- removing TAFE fees for Diplomas and Advanced Diplomas of Children's Services; and
- a 50 percent HECS-HELP remission for early childhood education teachers who are willing to work in rural and regional areas, Indigenous communities and areas of socio-economic disadvantage.<sup>101</sup>

At this stage the Government Framework does not incorporate targeted strategies for recruiting or training remote Indigenous workers.

This issue must be addressed as Indigenous people in remote regions have less access to training resources within travelling distance. Many people are unable to access training in larger regional centres because they have family obligations in their remote communities. On-the-job development and training is the only way that some remote Indigenous childcare workers can upgrade qualifications.

Ideally Indigenous childcare workers would be supported by a mentor in the workplace while accessing Distance Education services. To this end I support the recommendations made by the Secretariat of National Aboriginal and Islander Child Care Inc. (SNAICC) in its submission to the National Quality Framework for Early Childhood Education and Care:

Workforce planning needs to drop down to the local community level with disaggregated data that can inform funding decisions on the investment in the establishment of additional services or expansion of existing services. Under such a plan all existing Aboriginal and Torres Strait Islander children's services should be assisted by:

- Providing on-the-job training opportunities to the existing Indigenous staff to train from Certificate 11 level through to degree level teaching qualifications;
- Assessing the skills and knowledge of existing staff that have been working for many years in the children's services and have significant unrecognised qualifications;
- Training options should include training on the job within the local service with services funded to provide back fill staff when other staff are participating in training;
- Learning resources for students should be developed that reflect the cultural frameworks and local contexts within which services operate.<sup>102</sup>

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100 N Biddle, 'Indigenous Australians and preschool education: Who is attending?' in M. Fordham and R.G. Schwab (eds), *Education, Training and Indigenous Futures, CAEPR Policy Research: 1990-2007, Research Summaries* (2006), Reference No. 26 p. 2. At <http://www.anu.edu.au/caepr/educationfutures/ref026.pdf> (viewed 9 December 2008).

101 M Harrington, 'Preschool education in Australia', (2008) *Background Note*, Australian Government Parliamentary Library. At [http://www.aph.gov.au/library/pubs/BN/2007-08/PreschoolEdAustralia.htm#\\_Toc198010805](http://www.aph.gov.au/library/pubs/BN/2007-08/PreschoolEdAustralia.htm#_Toc198010805) (viewed 15 January 2009).

102 Secretariat of National Aboriginal and Islander Child Care Inc., *Submission to the National Quality Framework for Early Childhood Education and Care*, (September 2008), Commonwealth Department of Education, Employment and Workplace Relations. At [http://www.snaicc.asn.au/\\_uploads/rsfil/00210.pdf](http://www.snaicc.asn.au/_uploads/rsfil/00210.pdf) (viewed 13 January 2009).

## 5. The imperative to act now

There is hardly a better-researched and documented aspect of education than these significant early childhood years, including the long-term cost-benefits of quality childcare/preschool programs and the long-term disadvantage for children without access to quality early childhood programs ... investment in children at this level will pay off in myriad ways, helping to prevent child abuse, lack of thriving, ill-health, school failure, early dropout, poor job chances, delinquency and crime in later life ...<sup>103</sup>

The timeframe for preschool learning is relatively short. A child's chance at preschool education flashes past in a matter of years. I would like to be assured that government funding for early childhood education is targeted to remote locations where no services exist. This should be an absolute priority for governments as it is not acceptable for governments to consign these children to waiting lists.

There is urgent work ahead to assess the provision of preschool services as well as the school readiness of remote Indigenous children. The Australian Government's Indigenous Australian Early Development Index (I-AEDI) project will assist in this endeavour. Its aim is to develop trial and evaluate a culturally-appropriate measure of Indigenous children's early development. The I-AEDI will serve as a tool for communities and policy makers to identify the specific challenges for children in individual Indigenous communities.<sup>104</sup> The I-AEDI must include measures of current and projected Indigenous populations and stipulate threshold levels of staffing and services based on populations.

Early childhood education paves the way for school engagement and sets up life learning at a crucial stage in a child's development. Again I point to the lower educational outcomes for remote Indigenous students across all measured indicators. I have no doubt that these poorer outcomes correlate with poorer levels of government service provision. We must redress the imbalance of early childhood services and support in remote locations through:

- Targeted actions to recruit and retain a qualified Indigenous workforce;
- Opportunities for skill development for Teacher Assistants;
- The provision of services that are equitable across Australia based on current and projected populations; and
- Improvements in early childhood infrastructure.

## 6. Summary of issues: Early childhood education

- Indigenous children living in very remote areas are less likely to attend preschool than children in other locations;
- There is international evidence that supports the benefits of multi-purpose early childhood facilities;
- Indigenous preschool workers (qualified teachers and Teacher Assistants) have a positive effect on the participation rates of Indigenous children; and
- Early childhood Teacher Assistants are the backbone preschool services in remote communities and should receive quality professional development and training. Where possible, on-the-job training should be available so that remote Indigenous Teacher Assistants can upgrade qualifications.

<sup>103</sup> D Edgar, *The Patchwork Nation: Re-thinking Government – Re-building Community*, (2001), p 174.

<sup>104</sup> Minister for Education, Minister for Employment and Workplace Relations and Minister for Families, Housing, Community Services and Indigenous Affairs, 'Investing In The Early Development Needs Of Our Indigenous Children', (Joint Media Release, 20 January 2008). At <http://mediacentre.dewr.gov.au/mediacentre/AllReleases/2008/January/InvestingInTheEarlyDevelopmentNeedsOfOurIndigenousChildren.htm> (viewed 15 January 2009).

## Part 6: Education as the key to other life chances

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Let us resolve to use this systematic approach to build future educational opportunities for Indigenous children...

None of this will be easy. Most of it will be hard, very hard. But none of it is impossible, and all of it is achievable with clear goals, clear thinking, and by placing an absolute premium on respect, cooperation and mutual responsibility as the guiding principles of this new partnership on closing the gap.<sup>105</sup>

A large part of the core business of governments is to make policy decisions about the distribution of resources. Resource allocations are usually modelled on formulae which stipulate the greatest good for the greatest number. Governments will target disadvantage, but there is often a quantum aspect to their decision-making.

Unfortunately remote communities with small populations often miss out on infrastructure and services. Governments set policies to ensure that their investments are viable in the long-term and this means that they are concerned with servicing permanent populations that reach a particular threshold.

The policies affecting remote Indigenous education provision are no exception. In terms of government agendas, Indigenous education is a subject that is high on rhetoric and low on funding.

We don't have good estimates on the numbers of school-aged children and young people who have no access to school education. We know however that if all school-aged students were to attend, the education system in remote Australia would collapse. There are simply not the facilities and infrastructure to meet the demand.

The Australian Education Union argues that if provision was made for all Indigenous children to attend school in the Northern Territory, the cost of building more classrooms and teacher housing would be in the vicinity of \$375 to \$440 million.<sup>106</sup> It is time for governments to do this audit and to assess the shortfall in education resources across the country.

Remote schools must be an option for remote students. Governments must consider this in their future planning. It is neither possible nor practical for all remote Indigenous young people to leave their communities for schooling. Primary school-aged children are too young to be separated from families for boarding school and while some secondary students may want to take up a boarding school opportunity, there are others who will prefer to stay with their families. It goes without saying that in the unlikely event that **all** remote Indigenous secondary students chose to go to boarding school, there are not sufficient places to accommodate them. While the boarding option is one which should definitely be available to remote Indigenous students, it is not the only answer to remote education. This simple truth makes it incumbent on governments and others to provide a range of educational options, including high quality remote education.

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105 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, (The Hon Kevin Rudd MP, Prime Minister) at [http://www.aph.gov.au/house/Rudd\\_Speech.pdf](http://www.aph.gov.au/house/Rudd_Speech.pdf) (viewed 13 January 2009).

106 M. Kronemann, *Education is the Key, An education future for Indigenous communities in the Northern Territory*, Australian Education Union (2007), at p. 35.

Efforts by governments to address the considerable challenges of remote Indigenous education have been inconsistent since education first became available in remote regions of Australia.

We know for example that it is only in recent years that some secondary education is being provided in remote locations with high populations of Indigenous students. We know too that there are many remote communities across Australia with no reasonable access to secondary education. It was only a decade ago when we could plot secondary schools on a map of Australia based on concentrations of non-Indigenous students. While the situation is improving, there is still work to be done.

With few exceptions, the poor provision of school education has resulted in poor academic achievement in remote Australia.

### 1. Time to act

There is an imperative to act. There is an economic cost to the poor educational performance of remote Indigenous students. When a Year 5 student fails to reach the literacy and numeracy benchmarks, more often than not, there begins a slow progression to educational underachievement. Governments should start to see the bill rising. A lifetime dependent on social security benefits in conjunction with poorer life chances in health and housing is costly. In economic terms this is concerning and potentially avoidable; in human terms it is disastrous.

The National Aboriginal and Torres Strait Islander Education Policy (AEP) and the MCEETYA policy provides good future direction for Indigenous education because they underscore the basic requirements for a good educational service.

It is time to dispense with the debates about boarding schools versus education in remote Australia. We need to focus on providing good infrastructure and appropriately qualified teachers to remote Indigenous preschools and schools.

If we are going to assess remote Indigenous students against all other Australian students then we have to do better than part-time education services of three days a fortnight delivered in a tin shed with a dirt floor. We have to do better in our commitment to working with local communities to decide the appropriate education services for the region. **It is time to start looking closely at the inputs as well as the outcomes.**

## Part 7: Conclusion and recommendations

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The case studies of this chapter show that remarkable things can happen. In all of the case studies, Indigenous people actively participate at the local level in designing, developing and delivering the successful program or process. National and international research corroborates the case study findings, that Indigenous people are best placed to be the architects of our own policies and services. This is in keeping with human rights principles which emphasise the right of Indigenous people to full and effective participation in decisions which directly or indirectly affect us.<sup>107</sup> But we can't do this alone and we can't do this without the infrastructure and the services which will give our children access to the best possible education. We need support and resources from governments and others.

A partnership between Indigenous people, governments and others must be driven by local priorities if it is to be successful in improving education in remote Australia. Any partnership must establish common understandings of the roles and responsibilities of all members as well as clear direction about the objectives and anticipated outcomes. The partnership must also be measured and monitored by assessing inputs and outcomes.

The following recommendations aim to assist governments in making education 'available and accessible' to remote Indigenous students in line with their right to enjoy the full entitlements of Australian citizenship.<sup>108</sup> Appendix 4 of this report sets out definitions of 'available' and 'accessible' as defined by United Nations Committee on Economic, Social and Cultural Rights.

I urge governments to implement the following recommendations by undertaking audits of remote school-aged populations, and where populations reach a threshold; providing education services of a quality commensurate with urban schools and services.

<b>Recommendations</b>
<p><b>Recommendation 11</b></p> <p>That all Australian governments, through the Council of Australian Governments (COAG) commit to providing education services in remote communities that are comparable in quality and availability to those in all other Australian communities.</p>

107 United Nations Workshop, *Engaging the marginalized: Partnerships between indigenous peoples, governments and civil society, Guidelines for engagement with indigenous peoples*, United Nations Workshop Report (2005). At [http://www.un.org/esa/socdev/unpfii/documents/engagement\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/engagement_en.pdf), (viewed 30 January 2001).

108 Committee on Economic, Social and Cultural Rights, *General Comment No. 13 – the Right to Education*, UN Doc E/C.12/1999/10 (1999), paras 6–14. At <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/ae1a0b126d068e868025683c003c8b3b?Opendocument> (viewed 14 January 2009).

**Recommendation 12**

That the Australian Government, through COAG, develop a remote education strategy and accountability framework to be embedded in the National Indigenous Reform Agreement and in the relevant National Partnership Agreements.

**Recommendation 13**

That COAG initiate an audit of populations and projected populations of remote preschool and school-aged children by statistical sub-division to be measured against the relevant education infrastructure and services. That this audit form the basis of a national, funded plan to upgrade or build quality preschool, primary and secondary school infrastructure where populations warrant them.

**Recommendation 14**

That the strategy and accountability framework include monitoring and assessment processes with performance measures, targets and timeframes. Key areas for reporting include:

- Provision of education infrastructure at the preschool, primary and secondary school levels to meet population requirements by statistical subdivision;
- The establishment of remote education regional partnerships between Indigenous stakeholders and service deliverers;
- Assessments of the remote teacher workforce and its capacity to meet the specific requirements of the students cohort; and
- Recruitment and retention actions to maintain appropriately qualified (Indigenous and non-Indigenous) teachers and leaders.



# Chapter 4

## Beyond the Apology – an agenda for healing

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### Part 1: Introduction

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On 13 February 2008 Prime Minister Kevin Rudd, on behalf of the Australian Parliament, made a historic and long overdue national Apology to the Stolen Generations. With eloquence and emotion, Prime Minister Rudd said what so many Australians have wanted to say, and what so many Indigenous peoples have needed to hear:

For the pain, suffering and hurt of the Stolen Generations, their descendants and for their families left behind, we say sorry.

To the mothers and fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.

And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.<sup>1</sup>

I was honoured to respond to the Parliament's Apology on behalf of the National Sorry Day Committee and Stolen Generations Alliance. In my response I stated that:

By acknowledging and paying respect, Parliament has now laid the foundations for healing and for a reconciled Australia in which everyone belongs.<sup>2</sup>

More than this, I'd like to think that the National Apology was a transformational event in Australia's history. I draw comparisons to the election of Barack Obama as the first African American President of United States of America:

Just like many people will remember what they were doing when Barack Obama was elected as the President of the USA, an overwhelming majority of Australians will remember what they were doing when the Prime Minister apologised to the Stolen Generations.<sup>3</sup>

This transformational vision was shared by the Prime Minister. In the Apology speech he said:

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1 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

2 T Calma, *Let the healing begin: Response to government to the apology to the Stolen Generations* (Speech delivered at the Members Hall, Parliament House, Canberra, 13 February 2008). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/20080213let\\_the\\_healing\\_begin.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080213let_the_healing_begin.html) (viewed 17 October 2008).

3 T Calma, *Essentials for Social Justice: The Future* (Speech delivered at the Hawke Centre, University of South Australia, Adelaide, 12 November 2008). At [http://humanrights.gov.au/about/media/speeches/social\\_justice/2008/20081112\\_future.html](http://humanrights.gov.au/about/media/speeches/social_justice/2008/20081112_future.html) (viewed 13 November 2008).

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Let (the Apology) not become a moment of mere sentimental reflection. Let us take it with both hands and allow this day, this day of national reconciliation, to become one of those rare moments in which we might just be able to transform the way in which the nation thinks about itself...<sup>4</sup>

The National Apology was a 'line in the sand that marks the beginning of a new relationship and era of respect'.<sup>5</sup> We now need to build on this relationship and respect to move beyond the National Apology to healing. This chapter will help outline an agenda for what is needed for this healing to occur.

Healing has been taking place in many different Indigenous communities and contexts. I have detailed just a few of these excellent examples in previous Social Justice Reports.<sup>6</sup> An Indigenous well-being model was also part of the *Bringing them home* report's recommendations.

*Recommendation 33a:* That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.

*Recommendation 33b:* That government funding for Indigenous preventative and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.

*Recommendation 33c:* That all government-run mental health services works towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.<sup>7</sup>

However, it is now time to develop a comprehensive understanding of healing and look at ways that it can be systematically supported. In previous *Social Justice Reports* have found that many of the good examples of healing are ad hoc and poorly funded, when what is needed is consistent, long term support to heal the wounds of the Stolen Generations, their families and communities.

It is also timely to bring an agenda for healing to the fore of the national agenda on Indigenous affairs. Since the National Apology there is substantial good will and renewed political commitment to support healing. The following series of events that have occurred since the Apology highlight how healing has been elevated to the national political agenda.

Shortly after the Rudd Government commenced its term, the 2020 Summit was held on 19–20 April 2008. The 2020 Summit was a national agenda setting event, with participants from different sectors invited to identify their best ideas for dealing with Australia's future challenges. The 'Options for the future of Indigenous Australia' discussion stream at the summit recommended that the government should establish an entity that was an independent, legally-based healing body funded for the long term. The first step for such an entity would be to engage in programs, then build and lend support for the Indigenous-controlled services across the country—for example, health and child protection organisations. The participants also noted that the fund or entity could have the same structure as the Healing Foundation in Canada, though some concern was expressed about use of the word 'healing', and differences in

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4 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister)

5 T Calma, *Essentials for Social Justice: The Future* (Speech delivered at the Hawke Centre, University of South Australia, Adelaide, 12 November 2008). At [http://humanrights.gov.au/about/media/speeches/social\\_justice/2008/20081112\\_future.html](http://humanrights.gov.au/about/media/speeches/social_justice/2008/20081112_future.html) (viewed 13 November 2008).

6 For previous discussions of healing in relation to family violence see *Social Justice Report 2007*; in relation to women exiting prison see *Social Justice Report 2004*; and in relation to the principle of reparations in international law see *Social Justice Report 2000*.

7 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) p396.

opinion were expressed in terms of what kinds of activities would be included in the body's mandate.<sup>8</sup>

On National Sorry Day, 26 May 2008, Prime Minister Kevin Rudd spoke of the government's commitment to the ongoing healing of the Stolen Generations, and to working with the Stolen Generations Working Group to advance this process. Prime Minister Rudd said:

Today the Australian Government continues its commitment to the ongoing healing of our Stolen Generations. It is so important that we build on the goodwill and opportunities that were opened up by the apology. One of the main concerns that have arisen through our engagement with the stolen generations has been the critical need for healing services to help individuals and families with their own healing.<sup>9</sup>

In his press release on the same day he also announced the government would:

In June 2008, the Government will meet with Stolen Generations members, professionals in women's and men's health, trauma, child protection and mental health specialists and family reunion services to map a way forward together.

The Department of Health will consult with Stolen Generations on the development of a training program and materials for mainstream health services providers on Stolen Generations issues.<sup>10</sup>

In June 2008 the Senate Legal and Constitutional Affairs Committee released its final report on the Inquiry into the Stolen Generations Compensation Bill 2008 in which it recommended the federal government's 'closing the gap' initiative be extended to establish a National Indigenous Healing Fund to provide health, housing, ageing, funding for funerals, and other family support services for members of the Stolen Generations as a matter of priority. The Committee considered that the Canadian Aboriginal Healing Foundation may provide a useful model for the establishment of that Fund.<sup>11</sup>

The Department of Families, Housing and Community Services and Indigenous Affairs convened a Forum on Indigenous Healing on 16–17 September 2008. The aim of the forum was to bring national recognition to the impact of trauma and grieving in the lives of Aboriginal and Torres Strait Islander families. The Forum focused on healing of all Indigenous Australians, in particular Stolen Generations survivors and their families, as well as on what healing encompasses for Indigenous peoples and the educational and broader outcomes for children. The forum concluded with an agreed resolution that supported in principle the development of a national healing foundation and the formation of a working party, funded by government, to manage the community consultations on this.<sup>12</sup>

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8 *Options for the future of Indigenous Australia*, Australia 2020 Summit Final Report (2008), p 221–252. At [http://www.australia2020.gov.au/docs/final\\_report/2020\\_summit\\_report\\_6\\_communities.pdf](http://www.australia2020.gov.au/docs/final_report/2020_summit_report_6_communities.pdf) (viewed 1 December 2008).

9 K Rudd, *Apology Calligraphy Unveiling*, (Speech delivered at Parliament House, Canberra, 26 May 2008). At [http://pm.gov.au/media/Speech/2008/speech\\_0269.cfm](http://pm.gov.au/media/Speech/2008/speech_0269.cfm) (viewed 1 December 2008).

10 Prime Minister with Minister for Indigenous Affairs, 'Artwork Unveiled to Mark the Apology' (Media Release, 26 May 2008). At [http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/SDKQ6/upload\\_binary/sdkq62.pdf;fileType=application%2Fpdf#search=%22PG6%20%22rudd,%20kevin,%20mp%22%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/SDKQ6/upload_binary/sdkq62.pdf;fileType=application%2Fpdf#search=%22PG6%20%22rudd,%20kevin,%20mp%22%22) (viewed 1 December 2008).

11 Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008* (2008) par 3.131. At [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/stolen\\_generation\\_compensation/report/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/stolen_generation_compensation/report/index.htm) (viewed 17 October 2008). See part four of this paper, which identifies concerns among Stolen Generations groups for the need for specific funding and programs to be allocated to healing for Stolen Generations people, rather than being built into general Indigenous health initiatives such as the close the gap initiative.

12 FaHCSIA, *Papers of the Indigenous Healing Forum*, Indigenous Healing Forum, Canberra (16–17 September 2008).

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The Australian Greens also introduced the Stolen Generations Reparations Tribunal Bill into federal parliament on 24 September 2008. The Bill aimed to establish a Stolen Generations Reparations Tribunal with the functions of determining reparations and/or ex gratia payments for the historical injustice of the forcible removal of Aboriginal and Torres Strait Islander peoples from their families; creating a forum and process for truth and reconciliation; and considering proposed legislation and inquiring into prejudicial policies and practices, both past and present.<sup>13</sup>

The Bill identified different forms of reparation that could be made, including funding for healing centres, community education projects, community genealogy projects, and funding for access to counselling services, health services, language and culture training. Separate provision was made for monetary compensation for claimants who could prove that they have suffered particular types of harm, such as sexual or physical assault.<sup>14</sup> Like the Stolen Generations Compensation Bill, this Bill was not passed.

Perhaps more importantly, Indigenous communities are stridently calling for healing. This is not new. There have been widespread calls for healing and healing programs to meet the recommendations for the *Bringing them home* report. However, we are now seeing renewed calls for healing to address broader issues like family violence and alcohol and other drug use.

These calls are coming from all parts of the Indigenous community and increasingly from Indigenous men. On 3 July 2008 a summit on Indigenous men's health in Alice Springs issued the Inteyerrkwe Statement:

We as Aboriginal males from Central Australia and our visitor brothers from around the Australia gathered at Inteyerrkwe in July 2008 to develop strategies to ensure our future roles as husbands, grandfathers, fathers, uncles, nephews, brothers, grandsons, and sons in caring for our children in a safe family environment that will lead to a happier, longer life that reflects opportunities experienced by the wider community.

We acknowledge and say sorry for the hurt, pain and suffering caused by Aboriginal males to our wives, to our children, to our mothers, to our grandmothers, to our granddaughters, to our aunts, to our nieces and to our sisters.<sup>15</sup>

The Inteyerrkwe Statement made specific recommendations for healing for Indigenous men to assist them in combating violence in their communities:

2. Establishment of places of healing for Aboriginal men, including men's shelters/ 'sheds', short term 'drying out' places for men, and more resources for long-term rehabilitation of Aboriginal men with alcohol and other drug problems, preferably within their own community. Also 'half-way' houses to either give 'time out' or time to move slowly back into work/family/training, preferably to be run by Aboriginal men.<sup>16</sup>

The Summit called on the Australian Government and the Northern Territory Government to respond by the end of September 2008, but as at the date of writing, the government was still considering its position.

While it is positive that government is beginning to look at healing options, it is Indigenous community calls for healing that provide the most compelling imperative to progress healing initiatives. As Gregory Phillips has stated, 'healing is not a strategy,

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13 Explanatory Memorandum, Stolen Generations Reparations Tribunal Bill 2008 (Cth). At [http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/6EE5378346464B5FCA2574D000050D5C/\\$file/S0654EM.rtf](http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/6EE5378346464B5FCA2574D000050D5C/$file/S0654EM.rtf) (viewed 1 December 2008).

14 Explanatory Memorandum, Stolen Generations Reparations Tribunal Bill 2008 (Cth). At [http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/6EE5378346464B5FCA2574D000050D5C/\\$file/S0654EM.rtf](http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/6EE5378346464B5FCA2574D000050D5C/$file/S0654EM.rtf) (viewed 1 December 2008).

15 Aboriginal Male Health Summit, 'Inteyerrkwe Statement' (Media Release, 3 July 2008). At <http://www.caac.org.au/malehealthinfo/malehealthsummit2008sorry.pdf> (viewed 13 November 2008).

16 Aboriginal Male Health Summit, 'Inteyerrkwe Statement' (Media Release, 3 July 2008). At <http://www.caac.org.au/malehealthinfo/malehealthsummit2008sorry.pdf> (viewed 13 November 2008).

it is a process,<sup>17</sup> and it is a process that needs the full ownership of the Indigenous community if it is going to work. I think the Indigenous community has been crying out for healing for a long time and are ideally placed to take on the challenge of healing. Developments like the Inteyerrkwe Statement show a community that is united in its desire to face up to some difficult realities and heal.

We have a unique opportunity to capitalise on this combined government and community momentum but it will be important for the discussion to be clear, articulate and consultative to ensure a good outcome.

This chapter aims to assist the context for such a discussion by articulating some of the common understandings of healing and healing programs and what can be done to support and advance an agenda for healing.

- *Part 2* provides background information on definitions of healing;
- *Part 3* provides some examples of healing from around Australia;
- *Part 4* examines learning from Canada's decade of healing work; and
- *Part 5* reports on our consultations with Indigenous experts and representative organisations on suggestions for a national Indigenous healing body.

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17 G Phillips, *What is healing? – Appropriate public policy responses* (paper for the FaHCSIA Indigenous Healing Forum Canberra, 16–17 September 2008), p 2.

## Part 2: Understanding Healing

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### 1. Defining healing

As I noted in my *Social Justice Report 2007*, healing can be hard to define and consequently often not well understood.<sup>18</sup> The breadth of healing can lead to definitions that can seem vague, abstract and unempirical. This undermines the complexity of healing, and can ultimately diminish the credibility of programs that come under this banner.

To make healing a viable agenda that government will seriously fund and support we need to crystallise the case for healing by explaining what it is for Indigenous Australians. As Gregory Phillips notes:

Confounding the confusion over definition is the so called 'new age' approach to healing. There are lots of charlatans, Aboriginal and non Aboriginal, who assume the mantle of 'healer' and seek to sell their dodgy charms and wares for money, ego or prestige.<sup>19</sup>

This is not what healing is about. Previously I have defined healing as:

Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnections between, and effects of, violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous peoples, families and communities.<sup>20</sup>

An even simpler definition is borrowed from the Canadian and Native American experience but resonates with the Australian Indigenous experience: Healing is a 'spiritual process that includes therapeutic change and cultural renewal'.<sup>21</sup>

Both of these definitions include a spiritual aspect as well as a strong cultural aspect. Spirituality is largely outside the dominant paradigm of policy makers and funding bodies in Australia, yet it is an intrinsic part of healing. Perhaps this is part of the misunderstanding and reticence of government to truly engage with Indigenous healing programs.

Without getting into a metaphysical debate, spirituality is central to healing because it is a way of expressing and accessing the deepest part of the self that has suffered and needs to be made whole again. As Professor Judy Atkinson explains:

People don't come to me and say they want social or emotional well being or mental health. They say they want healing, they need something deeper that connects with their spirit.<sup>22</sup>

Grounding healing in Indigenous culture is another important aspect which distinguishes Indigenous healing from other forms of social and emotional wellbeing. This can mean connecting to traditional Indigenous spiritual stories, practices that form traditional law and connection to country, as well as locating the healing process within the

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18 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 52.

19 G Phillips, 'Healing and Public Policy' in J Altman and M Hinkson (eds), *Coercive Reconciliation* (2007), p 142.

20 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission (2004), p 57.

21 G Phillips, 'Healing and Public Policy' in J Altman and M Hinkson (eds), *Coercive Reconciliation* (2007), p 142.

22 J Atkinson, *Communication with Social Justice Commissioner's Office*, 27 August 2007.

Indigenous history and context. Indigenous healing, combined with its spiritual and cultural elements is about promoting wholeness and connection to move beyond the impact of the harms. As Gregory Phillips argues:

Healing is a process, it is not just a strategy and a nice formula of a funding program.<sup>23</sup>

Healing is a spiritual process that includes recovery from addiction, therapeutic change and cultural renewal. It can't just be one, it must be all of those things.<sup>24</sup>

However, what is striking about the definitions above is how healing is different from health services, housing, aged care, or family support. These are crucial services that can help establish the foundation for healing to take place and support people during the healing process, but they are not healing in and of themselves.

Similarly, unless healing services reach the crux of therapeutic change and cultural renewal, they will not achieve their aims and could be construed as a rather cynical attempt to re-badge basic entitlements. Primary health care, housing, aged care and family support are basic services and opportunities that all Australians should be entitled to.

## 2. Healing and trauma

Healing is a necessary response to address trauma experienced by individual and communities. So to understand healing we also need to understand trauma. Trauma is a 'sudden harmful disruption impacting on all of the spirit, body, mind and heart'<sup>25</sup> that requires healing. Psychologically, trauma has been defined as:

...an emotional state of discomfort and stress resulting from memories of an extraordinary catastrophic experience which shattered the survivor's sense of invulnerability to harm.<sup>26</sup>

Trauma is qualitatively different from other negative life stressors as it fundamentally shifts perceptions of reality. Negative stressors:

leave an individual feeling 'put out', inconvenienced and stressed. These experiences are eventually relieved with the resolution of the stressor. In contrast, trauma represents destruction of the basic organising principles by which we come to know self, others and the environment; traumas wound deeply in a way that challenges the meaning of life. Healing from the wounds of such an experience requires a restitution of order and meaning in one's life.<sup>27</sup>

Gregory Phillips talks about three areas of trauma experienced by Indigenous peoples:

- *Situational trauma* – trauma that occurs as a result of a specific or discrete event, for example from a car accident, murder or being taken away.
- *Cumulative trauma* – it is subtle and the feelings build over time, for example racism.

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23 G Phillips, *What is healing? – Appropriate public policy responses* (paper for the FaHCSIA Indigenous Healing Forum Canberra, 16–17 September 2008), p 2.

24 G Phillips, *What is healing? – Appropriate public policy responses* (paper for the FaHCSIA Indigenous Healing Forum Canberra, 16–17 September 2008), p 7.

25 H Moran & S Fitzpatrick, *Healing for the Stolen Generations – A Healing Model for All* (Paper for the FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008).

26 C Figley, *Trauma and its wake, Volume 1: The study and treatment of post-traumatic stress disorder* (1985), p xviii.

27 J Atkinson, C Atkinson and T Goreng Goreng, *Trans- and Intergenerational Trauma Study Guide*, Gribi College Southern Cross University (2008), p 12.

- *Inter-generational trauma* – if trauma is not dealt with adequately in one generation, it often gets passed down unwittingly in our behaviours and in our thought systems. For example, if you want to heal children and youth, you have to heal yourself as well to break the cycle.<sup>28</sup>

Importantly he notes that for Indigenous peoples who have experienced trauma as a result of colonisation, dispossession and dislocation, as well as the trauma of on-going racism, family violence and other events, often all three forms of trauma are applicable.<sup>29</sup>

Research has shown that the impacts of trauma are even more pronounced when the trauma has been deliberately inflicted rather than a result of natural circumstances. *Text Box 1*, based on an extract from Professor Judy Atkinson's work, illustrates these differences between deliberately inflicted trauma and trauma as a result of natural events in the contexts of a remote Indigenous community. On one hand, it tells a story of community strengths and solidarity in the face of a natural disaster while on the other hand, it tells the story of trauma experienced as a result of child sexual assault and community disintegration. This example demonstrates that deliberately inflicted trauma creates victimisation as well as all the associated emotional, psychological, cultural and spiritual harm. Deliberately inflicted trauma is much harder to recover from as it undermines the cohesion and strengths of individuals and communities.

### **Text Box 1: Natural disasters versus human atrocity<sup>30</sup>**

While visiting a group of Aboriginal people living in a small and remote community of Western Australia (which I will call Everywhere), they described to me what it was like for them the previous year, when a cyclone ravaged their community. Before the cyclone, they said they had prepared for the strong winds and the potential damage the cyclone could bring. They laughed and joked about their preparation, and how they came out of their shelters and found a changed world around them. After the cyclone, they said the country around them was as if an army of caterpillars had stripped all the leaves off the trees – making bare and raw the landscape, which surrounds their town.

The destruction of the physical environment was clear to see when flying into the community after the cyclone had passed. More importantly they were able to describe how they protected themselves from this natural disaster, which they called, with a kind of glee at how funny the world can be – *Cyclone Caterpillar*. They were competent in managing the potential threat of this natural event that in other related parts of the country, was called 'a disaster'.

During the same year a number of people in this small town called *Everywhere* committed suicide. Unlike other towns in Australia, impacted by natural disasters and suicide, people received no counselling support after the suicides.

28 Paraphrased from G Phillips, *What is healing? – Appropriate public policy responses*, (Paper for the FaHCSIA, Indigenous Healing Forum, Canberra, 16–17 September 2008), p 1.

29 G Phillips, *What is healing? – Appropriate public policy responses*, (Paper for the FaHCSIA, Indigenous Healing Forum, Canberra, 16–17 September 2008), p 2–3.

30 J Atkinson, C Atkinson and T Goreng Goreng, *Trans- and Intergenerational Trauma Study Guide*, Gnibi College Southern Cross University (2008), p 19–20.

Some months after the cyclone passed, a large number of arrests were made of senior men within the community on child sexual assault charges. Arrests continue at this very time, including children charged with abusing children. It is not possible to see the physical damage that this man made catastrophe has had on the people of *Everywhere*, let alone the emotional, psychological, social, cultural and spiritual distress. Yet, this distress is very real, and the social, cultural and spiritual fabric of *Everywhere* has been torn apart.

While during the time of the cyclone, Australians generally noted the progress and destruction of the cyclone, they did not take much notice. This was just another town in a remote part of Australia, subject to natural, yet devastating forces. It was far removed from the day-to-day lives of people living on the developed east coast of Australia. However, the arrests of many men from this small community made national and international headlines.

People from *Everywhere* had no idea that outside their community, others were talking about them; judging them; without understanding any of the circumstances with which they were living. They were struggling to understand what was happening within their own community, let alone outside their community.

They had no context to this great disaster, this *cyclone caterpillar* within. They knew what to do with the threat of the cyclone. This was their country. They had lived there, over hundreds of generations, through many such natural disasters. They knew how to prepare and reduce the potential impacts of the damage the cyclone would bring. They could not however, prepare themselves for the deeper and more lasting damage that the arrests, had crept up on them, and they had no contexts to its intrusion into the social fabric of the community, nor means of working to recover from its damage.

## 2.1 Historic and intergenerational trauma

Individual trauma reverberates across communities but also across the generations. The concept of historic trauma was initially developed in the 1980s by First Nations and Aboriginal peoples in Canada to explain the seeming unending cycle of trauma and despair in their communities. Essentially, the devastating trauma of genocide, loss of culture, and forcible removal from family and communities are all unresolved and become a sort of ‘psychological baggage... continuously being acted out and recreated in contemporary Aboriginal culture’.<sup>31</sup>

In Australia, Indigenous researchers have also demonstrated the connections between the historical experiences of colonisation and the forcible removal of children to the disadvantage of today’s Indigenous peoples and communities. Professor Judy Atkinson has worked on the intergenerational and trans generational transmission of trauma arguing that many of the problems in Indigenous communities, be it alcohol abuse, mental health problems, family violence or criminal behaviour, are symptomatic of the effects of this unresolved trauma reaching into the present day.<sup>32</sup> Gregory Phillips also speaks of trauma that is handed down spiritually. Using Canadian elder, Vera Martin’s, reference to it as ‘blood memory’, he explains: “It is a collective memory of what has happened and what has not happened”.<sup>33</sup>

31 C Wesley-Esquimaux and M Smolewski, *Historic Trauma and Aboriginal Health*, Aboriginal Health Foundation (2004), p 3.

32 J Atkinson, *Trauma Trails Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (2002).

33 Gregory Phillips, *What is healing? – Appropriate public policy responses* (Paper for the FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008), p 3.

This unresolved trauma is not limited to the forcible removal of children from their families. Trauma can occur in response to exposure to family violence, sexual assault, child abuse and neglect, substance misuse and other forms of experience that can harm an individual's sense of self and wellbeing. These traumas also find their way to influence subsequent generations to come.

Professor Helen Milroy, an Indigenous psychiatrist specialising in child psychiatry, describes how trauma flows through to Indigenous children:

The transgenerational effects of trauma occur via a variety of mechanisms including the impact of attachment relationship with care givers; the impact on parenting and family functioning; the association with parental physical and mental illness; disconnection and alienation from the extended family, culture and society. These effects are exacerbated by exposure to continuing high levels of stress and trauma including multiple bereavements and other losses, the process of vicarious traumatisation where children witness the on-going effects of the original trauma which a parent or care giver has experienced. Even where children are protected from the traumatic stories of their ancestors, the effects of past traumas still impact on children in the form of ill health, family dysfunction, community violence, psychological morbidity and early mortality.<sup>34</sup>

The dynamic of transgenerational effects of traumas was borne out in the results of the *Western Australian Aboriginal Child Health Survey*. Of the survey sample, 12% were looked after by a carer who had themselves been forcibly removed. These children were 2.3 times more likely to be at high risk of clinically significant emotional or behavioural difficulties.<sup>35</sup> This is consistent with the findings and recommendations of the *Bringing them home* report which highlighted the devastating intergenerational effects of forced removals.<sup>36</sup>

Such evidence of the transgenerational impacts of trauma also challenges us to shift our thinking on the distinctions drawn between perpetrators and victims as we understand how offenders are often victims of trauma or transgenerational trauma themselves. For instance, in the unpublished thesis by Caroline Atkinson-Ryan, cited in the *Little Children are Sacred* Report, over a third of the Indigenous male prisoners interviewed had been sexually abused and of these most could be diagnosed with post traumatic stress symptoms.<sup>37</sup> The situation appears to be even worse for female Indigenous prisoners with a NSW study finding that 70% of Indigenous women had been sexually abused as children; 78% reported being physically abused as adults; and 44% reported being sexually assaulted as adults.<sup>38</sup>

Professor Judy Atkinson argues that trauma becomes expressed as anger, violence and criminal behaviour, where 'rage turns inwards, but cascades down the generations, growing more complex over time'.<sup>39</sup> Anger, hopelessness, worthlessness and lack of genuine opportunities and disconnection run like a common thread through the experiences of both victims and perpetrators of violence.

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34 H Milroy, 'Preface' in S Zubrick, S Silburn, D Lawrence, D Mitrou, R Dalby, E Blair, J Griffin, H Milroy, J DE Mario, A Cox and J Li, *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People* (2005), p xxii.

35 S Zubrick et al, *The Western Australian Aboriginal Child Health Survey – The Social and Emotional Wellbeing of Aboriginal Children and Young People* (2005), p 25.

36 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), p 222–232.

37 C Atkinson-Ryan cited in P Anderson and R Wild, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children for Sexual Abuse* (2007), p 67.

38 Aboriginal Justice Advisory Committee, *Speak out, Speak strong* (2003), p5.

39 J Atkinson, *Trauma Trails Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (2002), p 82.

### 3. Who needs healing?

The theory of intergenerational transmission of trauma; the findings of major reports like *Bringing them home*; the daily realities of abuse, suicide and mental illness, alcohol and substance abuse and sky rocketing incarceration rates among Indigenous communities, all point to the imperative for community wide healing. All Indigenous peoples have been touched by trauma in some way. All Indigenous peoples deserve the opportunity to work through this trauma to heal.

At the same time, specific healing services are needed to attend to the distinct trauma and pain of members of the Stolen Generations. Stolen Generations networks note that due to the past traumas experienced Stolen Generations members are often reluctant to access services that are not dedicated to them and their needs. Consultation projects such as 'Moving Forward' conducted by the Public Interest Advocacy Centre, found that there was a desire amongst some Stolen Generations members for 'a discrete identity within the Indigenous community and recognition of their special needs'.<sup>40</sup>

Partly this can be attributed to the poor targeting and implementation of services for Stolen Generations members. For instance, evidence was given to the Senate Inquiry into Stolen Generations in 2000 that some of the funding for counselling, family and parenting support programs for Stolen Generations was directed to mainstream services instead.<sup>41</sup>

There are good reasons for supporting dedicated services for Stolen Generations. However, if we are serious about healing, it cannot stop with the Stolen Generations, because the trauma does not stop with the Stolen Generations. We have learnt that tightly targeted specialist services like Bringing Them Home counsellors barely scratch the surface of need and have their excellent work undermined when clients are faced with partners, families and communities who also need healing. The challenge is to develop inclusive and holistic healing approaches that have to capacity to assist members of the Stolen Generations, as well as their families and communities.

Finally, healing is not just about Indigenous peoples. Healing is part of reconciliation. It is not about attributing blame or a 'black arm band' view of history but honestly facing up to the mistakes of the past and acknowledging our shared history and shared future. The National Apology was an important step in recognition, healing and reconciliation. In his Sydney Peace Prize lecture, Patrick Dodson, one of the leaders of the reconciliation movement in Australia stated:

With the National Apology the nation has been given a wonderful opportunity to begin to make justice possible not only for the Aboriginal people but for all the people of this nation. Justice denied one group within the nation is a diminishment of us all and the nation will remain diminished until the wrong is righted.<sup>42</sup>

Commentators such as Gregory Phillips have noted the need for a truth and reconciliation process, similar to South Africa or Canada. This would enable both perpetrators and survivors of the forced removal policies to share their stories, and generate wide community acknowledgement for trauma and harm that occurred. This could be an important aspect of non-Indigenous healing, moving towards reconciliation.<sup>43</sup>

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40 A Cornwell, *Moving forward: Achieving reparations Interim Report*, Public Interest and Advocacy Centre (2001), p 4. At [http://www.piac.asn.au/publications/pubs/interim\\_20010801.html](http://www.piac.asn.au/publications/pubs/interim_20010801.html) (viewed 1 December 2008)

41 Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Healing: a legacy of generations* (2000).

42 P Dodson, *In Search of Change, Robed in Justice*, (Speech delivered upon acceptance of the Sydney Peace Prize, Sydney, 5 November).

43 G Phillips, *What is healing? – Appropriate public policy responses* (paper for the FaHCSIA Indigenous Healing Forum Canberra, 16–17 September 2008), p 2.

Broader Australian society must also deal with questions around history, identity and justice to heal. This means coming to terms with past policies but also current policies to ensure the mistakes of the past are never repeated and Indigenous peoples have equal life chances.

### 4. Healing and the principles of reparation

Part of healing is making things right and 'restoring the balance where wrong has been done'.<sup>44</sup> The *Bringing them home* report put careful consideration into how to achieve this, recommending a package of reparations to facilitate healing for Stolen Generations. Recommendation 3 states:

That for the purposes of responding to the effects of forcible removals, 'compensation' be widely defined to mean 'reparation'; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of

1. acknowledgment and apology,
2. guarantees against repetition,
3. measures of restitution,
4. measures of rehabilitation, and
5. monetary compensation.<sup>45</sup>

The van Boven principles are also called the 'Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'.<sup>46</sup> They are a combination of agreed international human rights standards that articulate the requirements for an effective remedy or reparation through restitution, compensation and rehabilitation. These principles also fit with an understanding of what needs to happen for healing to occur in response to human rights violations. The *Bringing them home* report was clear about how these principles could be put into practice:

- *Acknowledgement and apology* was cast as the first step in healing, recommending the federal and state and territory parliaments as well as other relevant institutions like Churches, police forces etc formally apologise.
- *Guarantees against repetition* included recommendations to establish the Indigenous Child Placement Principles, community education and incorporation of the Genocide Convention into Australian law.
- *Measures of restitution* included recommendations to establish family tracing and reunion services, language and cultural centres and protection of historical records.
- *Measures of rehabilitation* included recommendations for therapeutic services like counselling.

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44 G Phillips, 'Healing and Public Policy' in J Altman and M Hinkson (eds), *Coercive Reconciliation* (2007), p 149.

45 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), p 651.

46 The van Boven Principles were adopted by the General Assembly of the United Nation on 16 December 2005, *Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Resolution 60/147, (2005). At <http://daccessdds.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement> (viewed at 28 January 2009) For a more detailed discussion of the van Boven Principles in relation to Indigenous Australians see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, Human Rights and Equal Opportunity Commission (2000).

- *Monetary compensation* was recommended to be paid to all Stolen Generations members for damages.<sup>47</sup>

Importantly, these measures need to be seen as complementary and implemented as a whole.

[C]ompensation, while vital, is only one aspect of reparations...all components of reparations, as set out in the *Bringing them home* report, are 'inextricably linked, and all are required if there is to be an effective model of healing' for those affected by the forcible separation policies. Further, all the recommendations in the *Bringing them home* report, 'need to be implemented, fully and holistically and with attention to additional needs identified over the past decade'.<sup>48</sup>

It is encouraging to see that some of these principles have been put in place, but there are still glaring omissions in the form of lack of monetary compensation and inadequate measures of rehabilitation, restitution and guarantees against repetition.

The Commission noted in its submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Stolen Generations Compensation Bill 2008:

Since *Bringing them home* was released in 1997, both State and Federal governments have implemented a number of responses to its recommendations. In particular, new funding and programs have been introduced for organisations such as Link-Up; mental health counselling; family reunion services; parenting support programs; programs to preserve Indigenous languages and culture; oral history recordings; and for the archiving of records. Parliamentary apologies have also now been made in every State and Territory, and in the Federal Parliament.

Despite this progress, a number of the recommendations of the *Bringing them home* report are yet to be implemented. There is also evidence that measures which governments have taken to implement the recommendations of *Bringing them home* have sometimes been inadequate.<sup>49</sup>

The inadequacy of rehabilitation services has been well documented. In 2000 a Senate Inquiry into the implementation of the recommendations of the *Bringing them home* report found that the 'practical assistance' measures were not reaching members of the Stolen Generations and recommended independent evaluation of the progress of all *Bringing them home* report recommendations to ensure they are met.<sup>50</sup> In 2007 the Urbis and Keys Young *Evaluation of the Bringing Them Home and Indigenous Mental Health Programs* also confirmed that adequate services were not reaching members of the Stolen Generation. They found that Link-Up and Bringing Them Home counselling programs are chronically under-resourced for their high workloads.<sup>51</sup>

Similarly, there have concerns about child removals in the context of child protection and juvenile justice. While formal mechanisms like the Indigenous Child Placement Principle have been established in all jurisdictions, it is hard to have firm confidence in

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47 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), ch 14.

48 *National Sorry Day Committee Supplementary Submission 43a*, p 2 cited in Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008* (2008) 3.74. At [http://www.aph.gov.au/senate/committee/legcon\\_ctte/stolen\\_generation\\_compensation/report/c03.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/report/c03.htm) (viewed 1 December 2008).

49 Human Rights and Equal Opportunity Commission, Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Inquiry into the Stolen Generation Compensation Bill 2008 (9 April 2008) pars 6–7 At [http://humanrights.gov.au/legal/submissions/2008/080409\\_compensation.html](http://humanrights.gov.au/legal/submissions/2008/080409_compensation.html) (viewed 1 December 2008).

50 Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Healing: a legacy of generations* (2000).

51 A Wilczynski, K Reed-Gilbert, K Milward, B Tayler, J Fear and J Schwartzkoff, *Evaluation of Bringing Them Home and Indigenous Mental Health Programs*, Report prepared by Urbis and Keys Young for the Office of Aboriginal and Torres Strait Islander Health, Department of Health and Ageing (2007), p 70.

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guarantees against repetition when nationally only 62% of all Indigenous children are placed in accordance with this principle.<sup>52</sup>

However, there is concern that even these figures may not accurately reflect the real incidence of Indigenous children placed with Indigenous carers. For instance, in a recent Australian Human Rights Commission submission on a national framework for children protection, we noted an example from NSW:

Even though the NSW government's report to the commission inquiry [Special Commission of Inquiry into Child Protection Services in NSW] identified that '85% of Aboriginal children (are placed) in accordance with the Aboriginal Placement Principles, the Department of Community Services noted that 'what that figure mentions is compliance with a process rather than Aboriginal children in placements with Aboriginal carers, either authorised foster carers or authorised kinships or relative carers'.<sup>53</sup>

This low compliance rate can be attributed to Department of Community Services workers not sufficiently investigating the cultural background of children and appropriate placements. Because of this lack of investigation, in some cases the Courts don't even know that a child is Indigenous so there is no chance of culturally secure placement.<sup>54</sup>

The Special Commission of Inquiry into Child Protection Services in New South Wales in 2008 found that Aboriginal communities remain over represented in the child protection system and that there was a lack of culturally appropriate interventions for Aboriginal children, young people and their families among agencies.<sup>55</sup> The Commission recommended:

Recommendation 11.5 – DoCS should develop Guidelines for staff in order to ensure adherence to the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in s.13 of the *Children and Young Persons (Care and Protection) Act 1998*.<sup>56</sup>

More worrying, the number of Indigenous children under child protection orders is still unacceptably high, with Indigenous children being 6 times more likely to be under a care order than a non-Indigenous child.<sup>57</sup>

Juvenile detention is the other form of contemporary separation from family and community. Nationally Indigenous children are 23 times more likely to be in detention than non-Indigenous children.<sup>58</sup> On any given day, Indigenous children and young

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52 Australian Institute of Health and Welfare, *Child Protection Australia 2005–2006*, Child Welfare Series Report No. 40 (2007), p 70.

53 Human Rights and Equal Opportunity Commission, *Submission to the Department of Families, Communities and Indigenous Affairs on the Discussion Paper 'Australia's children: safe and well – a national framework for protecting Australia's children'* (14 July 2008), par 90.

54 Human Rights and Equal Opportunity Commission, *Submission to the Department of Families, Communities and Indigenous Affairs on the Discussion Paper 'Australia's children: safe and well – a national framework for protecting Australia's children'* (14 July 2008), par 91.

55 Hon James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008) p iv. At [http://www.lawlink.nsw.gov.au/lawlink/Special\\_Projects/ll\\_splprojects.nsf/vwFiles/Report\\_Executive\\_Summary\\_Recommendations.pdf/\\$file/Report\\_Executive\\_Summary\\_Recommendations.pdf](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/Report_Executive_Summary_Recommendations.pdf/$file/Report_Executive_Summary_Recommendations.pdf) (viewed 1 December 2008).

56 Hon James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008) p xxiv – xxv. At [http://www.lawlink.nsw.gov.au/lawlink/Special\\_Projects/ll\\_splprojects.nsf/vwFiles/Report\\_Executive\\_Summary\\_Recommendations.pdf/\\$file/Report\\_Executive\\_Summary\\_Recommendations.pdf](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/Report_Executive_Summary_Recommendations.pdf/$file/Report_Executive_Summary_Recommendations.pdf) (viewed 1 December 2008).

57 Australian Institute of Health and Welfare, *Child Protection Australia 2005–2006*, Child Welfare Series Report No. 40 (2007), p x.

58 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission (2007), p 46.

people make up about half the juvenile detention population nationally<sup>59</sup> and up to 90% in the Northern Territory.<sup>60</sup>

The issues of over representation in child protection and juvenile detention are indicative of the failure of piecemeal attempts to tackle problems of Indigenous disadvantage without getting the systemic and structural foundations right. If we are to bring these rates down we need to be seriously looking at the transmission of transgenerational trauma and embracing reparations and community wide healing.

## 5. Healing, reparation and compensation

The *Bringing them home* report recommended monetary compensation to achieve reparation and healing for the Stolen Generations, their families and communities. There is a clear link between the process of healing and forms of acknowledgement of wrong doing though apology and compensation.

Since the *Bringing them home* report, there has also been considerable consultation and debate on the issue of monetary compensation. Text Box 2 briefly outlines the recent key events in claims for monetary compensation, including Senate inquiries, important legal cases and state based schemes. Three of the state based compensation schemes are not Indigenous specific but some Stolen Generations members are eligible, if they can prove a reasonable likelihood that they experienced institutional abuse or neglect while in government care. Schemes to repay stolen wages are also applicable given the large number of Stolen Generations members who were placed in work situations where the wages were kept from them.

### Text Box 2: Key events in claims for compensation for the Stolen Generations

<p><b>31 July 1997</b></p>	<p>High Court of Australia dismisses the case of <i>Kruger v Commonwealth</i>,<sup>61</sup> the first case to be heard in the High Court that challenged the constitutional basis of forcible removal policies of Indigenous children.</p> <p>Alec Kruger’s case claimed that the Northern Territory Ordinance under which Indigenous children were removed from their families was invalid because it violated a number of rights (explicit and implied) in the <i>Constitution</i>. He also claimed that the Ordinance was an instrument of genocide and was therefore unlawful.</p> <p>The High Court found that the territories power in the <i>Constitution</i> (s122) could be exercised by the Commonwealth without regard to the rights of Australians living in the territories, and therefore the Ordinance was valid. It also found that the intent of the Ordinance was not to destroy Aboriginal peoples, and so was not an instrument of genocide – regardless of its impact.</p>
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59 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2006–2007*, Juvenile Justice Series No. 4 (2008), p 45.

60 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2006–2007*, Juvenile Justice Series No. 4 (2008), p 52.

61 *Kruger v Commonwealth* (1997) 190 CLR 1.

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<p><b>11 August 2000</b></p>	<p>Federal Court dismisses the cases of <i>Cubillo v Commonwealth</i>, an important test case for Stolen Generations compensation. Justice O’Loughlin noted inbuilt barriers to successful Stolen Generations litigation including:</p> <ul style="list-style-type: none"> <li>▪ availability of critical evidence;</li> <li>▪ loss and destruction of records;</li> <li>▪ difficulties in establishing the onus of proof with the passage of time; and</li> <li>▪ the frailty, illness and death of key witnesses for the defendant.<sup>62</sup></li> </ul>
<p><b>November 2000</b></p>	<p>Senate Legal and Constitutional Committee inquiry into the implementation of the <i>Bringing them home</i> report releases its report: <i>Healing: a legacy of generations</i>. The report recommends the establishment of a reparations tribunal based on the model proposed by the Public Interest Advocacy Centre (PIAC).<sup>63</sup> PIAC proposed the tribunal would:</p> <ul style="list-style-type: none"> <li>▪ be established by state and federal laws;</li> <li>▪ would not consider questions of legal liability, only eligibility for reparations;</li> <li>▪ would be open to individual, families, groups and communities affected by forcible removals;</li> <li>▪ would consist of a hearing process to determine eligibility but also offer the opportunity to have their story heard and acknowledged; and</li> <li>▪ would offer reparations in the form of counselling, money for family reunions and monetary compensation for individuals, while groups might receive funds for community programs to facilitate healing.<sup>64</sup></li> </ul>
<p><b>May 2002</b></p>	<p>The Queensland Government offers \$55.4 million in reparations for wages stolen between 1890 to 1972. The offer included:</p> <ul style="list-style-type: none"> <li>▪ \$4000 to each person alive on 9 May 2002, who was subject to government controls over their wages or savings and who was born on or before 31 December 1951; and</li> <li>▪ \$2000 to each person alive on 9 May 2002, who was subject to government controls over their wages or savings and who were born between 1 January 1952 and 31 December 1956.</li> </ul>

62 *Cubillo and Another v Federal (No. 2)* (2000) FCA 1084.

63 Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Healing: a legacy of generations* (2000).

64 A Cornwell, *Moving forward: Achieving reparations Interim Report*, Public Interest and Advocacy Centre (2001), p 8–9. At [http://www.piac.asn.au/publications/pubs/interim\\_20010801.html](http://www.piac.asn.au/publications/pubs/interim_20010801.html) (viewed 17 October 2008).

	<p>The scheme was criticised due to the inadequate level of financial reparation, lack of consultation with Indigenous communities, the inability of descendants to claim and the scope of indemnity sought by the Queensland government.<sup>65</sup></p> <p>By March 2008 \$35.87 million was unspent as many eligible claimants refused to agree to the terms of the offer, so a second round of payments was offered. These are top up payments of:</p> <ul style="list-style-type: none"> <li>▪ \$3000 to people who received a \$4000 payment; and</li> <li>▪ \$1500 to people who received a \$2000 payment.</li> </ul> <p>Applications close 30 April 2009.</p> <p>The remaining \$15 million will be placed in the Queensland Aboriginal and Torres Strait Islander Foundation to provide scholarships to Indigenous students.</p>
<p><b>July 2003</b></p>	<p>Tasmania announces a Redress scheme to compensate former wards who have experienced abuse whilst in care.</p> <p>Applicants may be granted ex-gratia payments of up to \$60 000 in the first three rounds of compensation. Applicants must have been aged 18 or older on July 11, 2003.</p>
<p><b>December 2004</b></p>	<p>Following NSW Government's apology for the stolen wages under the <i>Aborigines Protection Act 1909</i> (NSW) and subsequent laws until 1969, the NSW Government announces an Aboriginal Trust Fund Repayment Scheme (ATFRS).</p> <p>The ATFRS is not compensation but is an evidence based process which finds out how much money was put into the individual's trust fund and never repaid. If money is found to be owed it is repaid in full and indexed to the current value.</p> <p>Applicants:</p> <ul style="list-style-type: none"> <li>▪ May be either direct claimants or descendants;</li> <li>▪ Must apply before June 2010 (a two year extension of the deadline).</li> </ul>
<p><b>18 October 2006</b></p>	<p>The first Stolen Generations compensation scheme in Australia is set up in Tasmania by the <i>Stolen Generations of Aboriginal Children Act 2006</i> (Tas).</p> <p>Applicants:</p> <ul style="list-style-type: none"> <li>▪ May be either direct claimants or descendants</li> <li>▪ May be awarded \$5 000 per descendant with a cap of \$20 000 per family for descendants. Direct claimants will be made up from the balance of the fund after descendants' claims have been finalised.</li> </ul>

65 Social Justice Commissioner Dr William Jonas, *Statement by Dr William Jonas AM on the Qld 'stolen wages' issue* (2002). At [http://www.hreoc.gov.au/social\\_justice/stolen\\_wages.html](http://www.hreoc.gov.au/social_justice/stolen_wages.html) (viewed 16 January 2009).

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	<p>Applications were open for six months from the commencement of the Act on 15 January 2007. A total of 151 claims were received, with 106 eligible for payment. 84 Stolen Generations members received \$58,333.33 each and 22 descendants either \$5000 or \$4000 each depending on how many people were within the particular family group.<sup>66</sup></p>
<b>7 December 2006</b>	<p>Senate Legal and Constitutional inquiry into stolen wages releases its report <i>Unfinished Business: Indigenous Stolen Wages</i> documenting many of the barriers faced by stolen wages claimants.</p> <p>The report recommended better access to archives and research, modifications to the Queensland scheme and research and consultation in other Australian states and territories to determine whether stolen wages compensation is needed, and if so develop a scheme based on the NSW model.<sup>67</sup></p>
<b>May 2007</b>	<p>Western Australian Government announces a Taskforce to conduct consultations and prepare policy options to address stolen wages. A report was been submitted to Cabinet in June 2008.</p>
<b>1 August 2007</b>	<p>South Australian Supreme Court rules in favour of Bruce Trevorrow in a landmark case to find that he was unlawfully and falsely imprisoned as a member of the Stolen Generations. Mr Trevorrow is awarded \$525 000 in compensation.<sup>68</sup></p>
<b>1 October 2007</b>	<p>In response to the Forde Inquiry into abuse of children in institutions the Queensland government opens applications for the <i>Redress Scheme</i> to provide ex gratia payments to children who have suffered abuse in State Care.<sup>69</sup></p> <p>In July 2008 the scheme was extended to dormitories on the Aboriginal reserves of Barambah/Cherbourg, Palm Island, Taroom, Woobinda, Deebing Creek/ Purga, Yarrabah and Mapoon, enabling Aboriginal peoples who were housed in these dormitories and suffered institutional abuse or neglect to apply.</p>

66 Office of the Stolen Generations Assessor, *Stolen Generations of Aboriginal Children Act – Report of the Stolen Generations Assessor*, Department of Premier and Cabinet (2008), p 2. At [http://www.dpac.tas.gov.au/\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/_data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf) (viewed 16 January 2009).

67 Senate Standing Committee of Legal and Constitutional Affairs, Parliament of Australia, *Unfinished Business: Indigenous stolen wages* (2006) pars 8.23–8.28.

68 *Trevorrow v. State of South Australia (No 5)* (2007) SASC 285. Other documented cases can be found in C Cunneen and J Grix, 'Chronology of the Stolen Generations Litigation 1993–2003' (2003) 17 *Indigenous Law Bulletin*. At <http://www.austlii.edu.au/au/journals/ILB/2003/17.html> (viewed 21 January 2009).

69 Other responses to the Forde Inquiry have included an apology to people abuse in state care and the establishment of the Forde Foundation Trust Fund. The Forde Foundation Trust Fund provides grants to former residents to help them overcome the disadvantages they now experience as a result of childhood treatment that affected their education, employment, health and general well being. These are small grants for things like education costs, personal computers, dental services and personal development services. This is not restricted to people who suffered institutional abuse and neglect and grants from the Foundation are not regarded as compensation.

	<p>Applicants:</p> <ul style="list-style-type: none"> <li>▪ Must lodge between 1 October 2007 and 30 June 2008.</li> <li>▪ Sign a deed of release to prevent further legal action.</li> <li>▪ May be awarded \$7 000 for ‘first level’ payments and up to \$40 000 (including first level payment) for more serious abuse as assessed by a panel of experts.</li> </ul> <p>The Forde Foundation has a grants program, through which former residents are able to access services or items such as family reunification, education, training and personal development, health and dental care and other items or services to facilitate improve their quality of life.<sup>70</sup></p>
<b>17 December 2007</b>	<p>Western Australian government announces a <i>Redress Scheme</i> to provide ex gratia payments for children who have suffered harm in State Care. Claims may only be brought by direct claimants.</p> <p>Applicants:</p> <ul style="list-style-type: none"> <li>▪ Must lodge between 1 May 2008 and 30 April 2009.</li> <li>▪ Sign a deed for release to prevent further legal action against the government of Western Australia.</li> <li>▪ May be awarded \$10 000 for a ‘reasonable likelihood’ of abuse and/ or neglect in State care and up to \$80 000 if they can provide medical and/ or psychological evidence of abuse and/ or neglect in State care.</li> </ul>
<b>4 February 2008</b>	<p>The Tasmanian Premier announced that the redress scheme for children abuse in care will be re-opened for a period of three months.</p> <p>The scheme is for those who were in ‘care’ in Tasmania and who missed out on the original review in 2004/2005. The re-opening will allow for a fresh look at cases of those who would have qualified for consideration under the previous scheme but did not apply for legitimate reasons.</p> <p>The eligibility requirements were as per the previous scheme.</p>
<b>June 2008</b>	<p>The Standing Committee of Legal Constitutional Affairs into the Stolen Generation Compensation Bill 2008 recommends that the Bill should not proceed.</p> <p>The Committee notes the majority of support for monetary compensation but is:</p> <p style="padding-left: 40px;">[M]indful of the strong arguments that monetary compensation is only one component of reparations... and considers a holistic, nationally consistent approach is the most appropriate means of addressing the specific needs of members of the Stolen Generations and of actively promoting an effective model of healing.<sup>71</sup></p> <p>The committee recommends the Australian Government establish a National Indigenous Healing Fund.</p>

70 Queensland Government, *Redress Scheme – Support and Services*, <http://www.communities.qld.gov.au/community/redress-scheme/support-services.html> (viewed 1 December 2008).

71 Senate Standing Committee of Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008* (2008) pars 3.121–3.122.

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There have been positive steps towards compensation and reparation, exemplified by the Tasmanian government's compensation package for Stolen Generations members. But this action is unfortunately the exception to the rule.

Even the generalised redress schemes in Queensland and Western Australia stop short of acknowledging the specific harm done to the Stolen Generations. Further, there are unresolved legal questions as to whether recipients under the redress scheme are prevented from pursuing other litigation or compensation for forcible removal issues.

The objective of achieving compensation still needs to be taken forward because it is so intrinsically linked to a holistic view of reparations and healing. The Australian Human Rights Commission continues to actively advocate for these measures. Most recently the Australian Human Rights Commission made a submission and gave evidence in favour of monetary compensation at the Inquiry into the Stolen Generation Compensation Bill. It argued that:

The failure to adequately compensate Indigenous people who were removed from their families and communities remains a significant human rights issue in Australia<sup>72</sup>

The Commission recommended that the Bill be passed. The submission also commended the Bill for allocating funding to healing centres as a 'collective approach to redress in recognition of the harm suffered by whole families and communities affected by past laws and practices'.<sup>73</sup> At the same time the submission cautioned that 'healing programs should in no way be construed as an alternative to mechanisms for financial compensation'.<sup>74</sup>

There are important reasons for advancing the issues of therapeutic and cultural community healing services separately from the issue of compensation. One compelling reason for advancing healing and compensation separately, is that broad sections of the Indigenous community desperately need access to healing services, not just Stolen Generations members. Approaching the two issues separately will facilitate healing services being provided for a broader part of the community as soon as possible.

This was echoed at the FaHCSIA Indigenous Healing Forum where participants emphasised the need for a clear delineation between healing and compensation.

However, it is also not ideal to have compensation without healing services. The experience of Canada will be discussed further in Part 4 but it is clear from the Canadian experience that compensation without healing opened up old wounds and often left recipients in situations where they were vulnerable to financial abuse.<sup>75</sup>

Indigenous peoples participating in the WA Redress Scheme have also reported being retraumatised as a result of going through the process for claiming compensation. In such circumstances, it is crucial that compensation claimants have access to support services and healing programs to ensure that they are able to manage the process in a way that provides closure, not re-traumatisation.

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72 Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Stolen Generation Compensation Bill 2008* (9 April 2008), par 2.

73 Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Stolen Generation Compensation Bill 2008* (9 April 2008), par 26.

74 Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Stolen Generation Compensation Bill 2008* (9 April 2008), par 26.

75 M Dion Sout and R Harp, *Lump Sum Compensation Payments Research Project: The Circle Rechecks Itself*, Aboriginal Healing Foundation (2007), p xii. At [http://www.ahf.ca/pages/download/28\\_13247](http://www.ahf.ca/pages/download/28_13247) (viewed 24 October 2008).

## Part 3: Examples of healing programs in Australia

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Definitions and theory around healing are an important foundation for understanding healing but real examples provide an extra dimension that show how healing actually works. This section will briefly profile a small selection of healing programs to illustrate what healing looks like in practice and some of the positive impacts in the lives of Indigenous individuals and communities. A more extensive list of healing programs reported from our consultations can be found at Text Box 7.

This is not the first time that I have profiled promising practices in healing. The *Social Justice Report 2007* looked in depth at some promising healing programs related to family violence and child protection.<sup>76</sup> The *Social Justice Report 2004* examined some healing programs for Indigenous women exiting prison.<sup>77</sup> Given this previous research, this section will only very briefly outline a few examples of healing approaches in order to illustrate the breadth of healing work that is already taking place in Australia.

Another way of understanding the different examples of healing programs is looking at them through the ‘three pillars’ of healing that have been developed by the Canadian Aboriginal Healing Fund. The three pillars are:

- reclaiming history;
- cultural interventions; and
- therapeutic healing’.<sup>78</sup>

These three categories are not always mutually exclusive but do help distinguish between healing approaches and other social and emotional and therapeutic models.

*Reclaiming history* involves learning about the impact of specific events in history such as forcible removals, and allowing individuals to understand their experiences and trauma in a broader social context. These approaches:

[R]educe self blame, guilt and isolation. Understanding history can be both a catalyst for healing as well as pave the way for mourning what was lost – a recognized stage in the trauma recovery process.<sup>79</sup>

Examples of reclaiming history approaches are oral history projects that document the experience and history of the Stolen Generations and commemoration and memorial activities that mark the losses of the Stolen Generations.

Arguably the first step in reclaiming the history and healing for many Stolen Generations members was telling their stories to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families and seeing these stories acknowledged and valued in the *Bringing them home* report. Text Box 3 outlines another Australian Human Rights Commission project that gives voice to the experiences of Stolen Generations members to reclaim history on the occasion of the ten year anniversary of the *Bringing them home* report.

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76 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Australian Human Rights Commission (2007), p 21–179.

77 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Australian Human Rights Commission (2004), p 57–65.

78 L Archibald, *Final Report of the Aboriginal Healing Foundation, Volume III: Promising Healing Practices in Aboriginal Communities*, Aboriginal Healing Foundation (2006), p 16.

79 L Archibald, *Final Report of the Aboriginal Healing Foundation, Volume III: Promising Healing Practices in Aboriginal Communities*, Aboriginal Healing Foundation (2006), p 16.

### **Text Box 3: Reclaiming history: *Us Taken Away Kids***

In December 2007 the Australian Human Rights Commission launched *Us Taken Away Kids*, a magazine to commemorate the 10 year anniversary of the *Bringing them home* report.

When it was launched I noted the important connection between story telling and healing:

The story-telling tradition of our peoples is one of the great strengths of our cultures. It contributes to our resilience as peoples as it has throughout millennia.

But we don't tell stories for the sake of it.

For the stolen generations, story telling is an indispensable part of both recognising the suffering of the past and its impact into the present; and of creating the basis for the journey of healing to begin.<sup>80</sup>

*Us Taken Away Kids* tells the stories of the Stolen Generations, by the Stolen Generations. It contains the stories, poems, artwork and photos of the stolen generations and reflects on life in foster-care and homes, trauma and loss, discovering family and identity and healing, in a way that reclaims the history and reaffirms resilience.

*Cultural interventions* are activities 'that engage people in a process of recovering and reconnecting with their culture, language, history, spirituality, traditions and ceremonies to reinforce self-esteem and a positive cultural identity'.<sup>81</sup> Examples of cultural interventions in Australia are:

- Link-Up programs that help Stolen Generations members reunite with family members and culture;
- programs that help connect young people with Elders to learn about culture and law;
- language preservation and renewal programs; and
- programs that help individuals and communities maintain links to country.

Text Box 4 provides some examples of culturally based healing programs around Australia.

### **Text Box 4: Cultural interventions**

#### *Yorgum Healing Centre Grandmother's Group*

Yorgum Healing Centre in Perth provides counselling and healing services to Aboriginal victims of family violence and sexual assault. One of the innovative cultural interventions run by Yorgum is the Grandmother's Group which links Indigenous young peoples with Elder women.

80 T Calma, *Essentials for Social Justice: Sorry*, (Speech delivered at the launch of *Us Taken Away Kids*, Sydney, 11 December 2007). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2007/essentials\\_sorry20071211.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2007/essentials_sorry20071211.html) (viewed 31 October 2008).

81 L Archibald, *Final Report of the Aboriginal Healing Foundation, Volume III: Promising Healing Practices in Aboriginal Communities*, Aboriginal Healing Foundation (2006), p 16.

The Grandmothers group has a dual purpose of allowing Elder women to share their knowledge and culture and keep active in the community, as well as providing nurturing to the younger generation. This group helps build community and intergenerational connection by keeping family and culture alive.

*Balunu cultural camps*

Balunu cultural camps are run by the Balunu Foundation in Darwin. The camps target 'at risk' Indigenous young peoples. Young people are taken on country to remote cultural camps where they learn about traditional culture and law from Elders and program workers. This knowledge is used to build self respect and respect for others.

Anecdotally, some of the young people have achieved good results and made real improvements to their lives. A recent evaluation by the Menzies School of Medicine has shown improvement in the life quality of participants in the cultural camps.

*Tirkandi Inaburra Cultural and Development Centre*

Tirkandi Inaburra is an Aboriginal community controlled early intervention centre in Coleambally, Central Southern NSW that provides a culturally based residential program for Indigenous boys between the ages of 12–15 years. The aim is to reduce the likelihood of Indigenous young people becoming involved with the juvenile justice system.

It is a unique program as it combines cultural awareness activities along with education and support services to strengthen self-worth, resilience and cultural identity.

Tirkandi Inaburra Cultural and Development Centre was a finalist in the 2008 Indigenous Governance Awards in recognition of their good work over the past two years.

*Therapeutic healing* includes a combination of traditional and Western therapies to help individuals and communities recover from trauma. The success of these approaches seems to be the melding of cultural interventions and therapeutic work to facilitate healing. Some examples of therapeutic healing are:

- yarning circles;
- individual counselling;
- group therapy programs;
- men's and women's groups;
- community wide healing circles;
- traditional ceremonies and nangkari (traditional healer); and
- residential programs and retreats.

These approaches are commonly adapted to target a wide range of different groups needing healing including:

- Stolen Generations members;
- young people who have experienced abuse or family violence;
- women and other victims of family violence and sexual assault;
- people involved in the criminal justice system; and
- people with alcohol and other drug issues.

Text Box 5 highlights a few examples of therapeutic healing models.

### **Text Box 5: Therapeutic healing**

#### *Community Capacity Building Program in Kalumburu*

In 2007 16 men and boys were arrested on sexual assault charges, devastating the remote community of Kalumburu in the Kimberleys. To initiate healing, the community approached Professor Atkinson to work with them. The project has been funded by the Australian Government.

Professor Judy Atkinson and her team from the Collaborative Indigenous Research Centre for Learning and Educare (CIRCLE) at Gnibi College of Indigenous Australian Peoples, Southern Cross University have commenced a two year program of community healing and capacity building through a series of workshops.

Professor Atkinson's healing work with Kalumburu is based on her ideas around transgenerational transmission of trauma and previous work with other Indigenous communities. Importantly, it is based on consultation and finding out how the community is coping and what they want to get out of the healing process.

It is a slow process of building trust and creating a safe place for people to share stories of abuse and hopes for the future. This safe place is a healing circle, embodying connection and inclusion of strong Indigenous community models.

The healing circle utilises therapeutic individual and group tools that allow participants to tell their stories through:

- narrative therapy;
- making sense of the stories by 'feeling the feelings' through emotional release and 'body work' like massage, and relaxation methods;
- reclaiming culture; and
- art and music therapy.

To achieve longer term goals, community capacity development is intrinsic to healing. This involves building the confidence and strengths of individuals and community that can support the healing process when Professor Atkinson and her team have gone.<sup>82</sup>

#### *Red Dust Healing*

Red Dust Healing is a cultural healing program developed by Tom Powell and Randal Ross, experienced Indigenous workers, delivered through group sessions and individual case management and support systems.

The Red Dust Healing program deals with areas significant to healing including; identity; family roles and structure; relationships; Elders roles; men's business; Indigenous history and the impacts of colonialism; drug and alcohol use; family violence; grief and loss; stress and mental health issues; anger management; education and employment; housing issues; and meetings, community contribution and governance.

Red Dust Healing has been run for a wide range of participants, including young people in juvenile detention centres, groups including men and women, high school students and mens' groups. Red Dust Healing has also been adapted for delivery to doctors, police and legal practitioners to increase cultural awareness and explain healing.

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82 J Atkin, Communication with Social Justice Unit staff, September 2008.

The cultural and therapeutic elements are strengthened by practical case management and support systems to place the gains made from healing in a socially sustainable context. Each participant develops an individual case plan that will help continue the healing work. This can include referrals to relevant services and a buddy or mentor for informal support.

In some locations, formal links have been made with employment opportunities. For instance, a partnership has been developed with North Queensland Water which has resulted in employment for some participants. To date, around 156 participants have completed the program. Participant feedback has shown some powerful positive outcomes.<sup>83</sup>

#### *Gamarada Men's Group*

Gamarada is an example of a strong men's group taking up the issue of healing and life skills development. Men's groups have gained increasing support in Indigenous communities and are now seen as a powerful way for Indigenous men to look at issues of healing and identity.<sup>84</sup>

Gamarada, meaning 'comrades or friends' in the Gadigal language, is based in Redfern, NSW and is a 10 week group program that incorporates traditional Indigenous culture and healing with Eastern methods of self healing and self control.

While most group programs are based around 'talking therapies', Gamarada teaches participants practical skills as well, like relaxation, breathing, visualisation exercises and awareness in connection to Indigenous spiritual concepts like Dadirri (deep listening and quiet stillness) and anger management or as it is termed in Gamarada 'non-reaction' techniques. The program shows participants how they can apply these skills in their own life and discuss issues like anger management, substance use and family violence.

Gamarada coordinator Ken Zulumovski says funding and administrative support is crucial to the sustainability and expansion of the Gamarada program and others like it. There are hundreds of men who are beginning to look to the Gamarada model for support and daily enquiries from community and government services are adding to the list. These men and their boys sometimes pass up mainstream services to opt for something cultural.

Gamarada also creates a great opportunity to encourage and educate the men and return their families about the importance of regular health checks with their GP. This is fundamental to closing the gap in Aboriginal health and stifling the cycles of poverty that lead to crime, prison and low socio economic status. Ken Zulumovski says:

The Gamarada team are doing the ground work and the Aboriginal and non Aboriginal communities of Redfern and Sydney acknowledge the results but we need significant support. The benefits to the community at large will be ten fold to any financial support received, the research is evident to this. The question around funding shouldn't be if but rather when. We have a dynamic & talented team on the ground with the skills and networks in place and they are ready to do their work.<sup>85</sup>

Another crucial area in the development of healing programs in Australia has been the emergence of appropriate training to skill workers to conduct healing programs. This

83 T Powell, Communication with Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Social Justice Unit staff, 23 October 2008.

84 For a more extensive discussion of men's groups and case studies see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007) p 92–113 and p 179–186.

85 K Zulumovski, Communication with Social Justice Unit staff, 26 November 2008.

is still a fledgling area with a small number of Indigenous training modules that explain healing and culturally appropriate responses to trauma. Gregory Phillips argues that:

Many biomedical mental health programs lack understanding of spirituality and how to deal with feelings in their training programs. Even some 'Indigenous' social and emotional well-being centres often are simply delivering a Western diagnostic and treatment regime in an Aboriginal setting.<sup>86</sup>

Text Box 6 captures a few examples of training and education programs that are successfully achieving this.

### Text Box 6: Training and education

#### *Murumali*

Murumali is a healing model to assist Indigenous and non Indigenous professionals who work with Stolen Generations members and their families. The Murumali healing model was developed by Lorraine Peters, a member of the Stolen Generations, in 2000.

The healing model is holistic and culturally secure. It provides workers with the tools to assist Stolen Generations members along their own path of healing. Different workshops are held for Indigenous and non Indigenous workers to ensure cultural safety and encourage discussion of sensitive issues.

Additional workshops have been developed about risk management and suicide prevention and general awareness of Stolen Generations issues.

Healing workshops have also been run for Stolen Generations and their families, notably Indigenous prisoners. Despite the success of these workshops, the bulk of funding and demand is for training programs for workers.

The Murumali Program is now accredited as a component of Aboriginal Primary Health Care and is a core unit in the Certificate IV and Diploma in Aboriginal and/or Torres Strait Islander Primary Health (Community Stream) – Social and Emotional Wellbeing offered by the Aboriginal Health College.

Over 100 workshops have been run and 1,000 people trained since 2000. The Murumali Program has received good feedback and has been cited as an example of best practice in the *Evaluation of Bringing Them Home and Indigenous Mental Health Programs*.<sup>87</sup>

#### *Gnibi College of Indigenous Australian Peoples, Southern Cross University*

The Gnibi College has developed a range of university level courses on Indigenous healing, including the Bachelor of Indigenous Studies: Trauma and Recovery; and Graduate Certificate, Graduation Diploma and Masters in Indigenous Studies: Wellbeing.

These courses provide innovative Indigenous approaches to education, where according to Professor Judy Atkinson, 'the teacher and the taught create the teaching'. This takes place through experiential healing, where participants experience and actively participate in many of the healing processes to develop a broad set of skills and critical reflections that they can take out in their work.

There is an emphasis on engagement with Indigenous communities. Students are encouraged to undertake field placement to develop healing skills and give back to the community.

86 G Phillips, 'Healing and Public Policy' in J Altman and M Hinkson (eds), *Coercive Reconciliation* (2007), p 146.

87 A Wilczynski, K Reed-Gilbert, K Milward, B Tayler, J Fear and J Schwartzkoff, *Evaluation of Bringing Them Home and Indigenous Mental Health Programs*, Report prepared by Urbis and Keys Young for the Office of Aboriginal and Torres Strait Islander Health, Department of Health and Ageing (2007).

Indigenous community members are actively encouraged to participate in the courses and there are pathways for Indigenous community members who may have had little formal education. Because the program is taught from an Indigenous framework and with a greater emphasis on experiential learning than traditional academic assessment, it has been successful in supporting Indigenous students who may have struggled give a previous lack of educational experience.

To date, 45 students have graduated from the Masters program and 37 are currently completing the program.

*Red Dust Healing training*

Part of increasing the sustainability and reach of the Red Dust Healing program is the training component of the program. Participants are encouraged to become trainers so they can run the program in their own communities and provide mentor support to other participants.

This training requires that individuals attend two blocks of program. The first assists the participants to deal with their own healing issues and familiarise themselves with the program. The second time they take a more active role in the program as mentors and co facilitators under the supervision of the program authors, Tom Powell and Randal Ross.

Participants are left with all the program content and materials and can access additional support from Tom Powell as required.

This training is increasing the number of people who are able to access the program. For instance, an Aboriginal Liaison Officer from Lismore Police has since participated in the training and has now run the program in the local high school.

*Gamarada train the trainer*

Gamarada also provide a train the trainer component where they encourage participants to gain the skills to run sessions themselves in the community. Of note, one of their graduates, David Leha, a former prisoner, has now gone on to be paid to facilitate a session, 'Anger Management and Healing' for the NSW Department of Corrective Services.

What is common to all of these examples is the necessity to 'heal the healers' before they can go on and effectively help others heal. This means that some of the training and education is outside the mainstream paradigm because it focuses on individual healing. However, as we see in the Gnibi College Programs, Gamarada and Red Dust Healing, this becomes experiential learning that students then take back to their communities and use in their healing and therapeutic work.

Training is also an important element of making these healing programs sustainable. Currently, there are very few people trained in the provision of Indigenous healing services, and this limits the number of locations where such services are available. Increasing the number of people who are able to run these programs and understand the fundamentals of healing ensures that knowledge and skills are not tied up with individuals but become part of the broader community capacity. Healing is not the exclusive domain of health workers, social workers, psychologists and other professionals. Instead, healing can be best achieved when we:

[T]rain the natural helpers (grandmothers, brothers, aunts and parents) in basic suicide prevention, addictions intervention and meaning of healing.<sup>88</sup>

88 G Phillips, 'Healing and Public Policy' in J Altman and M Hinkson (eds), *Coercive Reconciliation* (2007), p 146.

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The development of these skills can lead to individual and broader community healing, and to the provision of a range of healing services and programs across all areas of Australia.

Another common element in all of these practice examples is the centrality of cultural renewal. This comes about in a two pronged way. Firstly, the programs create an environment of cultural safety. Cultural safety, like healing, is one of those terms that is liberally thrown around but often poorly understood. Cultural safety is:

[A]n environment, which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what, they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity, and truly listening.<sup>89</sup>

It is more than accommodating cultural difference; it is about creating a space where culture is respected and valued.

The second component of cultural renewal in these programs is actively celebrating culture and educating program participants in culture. This recognises that many Indigenous peoples may have lost touch with aspects of traditional culture. Learning about traditions can be grounding and a source of pride.

Culture isn't limited to traditions and the past, it is a living, breathing thing. These programs foster identity and pride, dispelling the negative stereotypes that many hold about Indigenous peoples. By giving participants, especially young people, a different way of understanding where they come from, they are actively creating a new culture of pride and possibilities. To this end, it is important to have Indigenous healing programs that are delivered by Indigenous peoples.

These examples also highlight the diversity and complexity of needs that healing can address. Healing by its very nature is holistic and can therefore assist individuals who have multiple and complex needs. Many of the people who participate in healing programs have been in and out of a number of mainstream services. Often it isn't until they attend healing programs that look at the cause, rather than just the symptoms, of their issues, that they make progress.

Text Box 7 below provides a list of healing programs and approaches. Although not comprehensive, it includes examples that have been reported in our consultations for this chapter, as well as other examples from my previous research.

<b>Text Box 7: Examples of healing programs in Australia</b>	
<b>Healing program/ approaches</b>	<b>Description</b>
Bringing Them Home and Indigenous Mental Health Programs (Australian Government – Office for Aboriginal and Torres Strait Islander Health)	<ul style="list-style-type: none"> <li>▪ <i>Link-Up Program</i> – provides a national network of services supporting and assisting Indigenous peoples affected by past removal policies in tracing their family history and potentially reuniting them with their families.</li> </ul>

89 R Williams, 'Cultural Safety – what does it mean for our work practice' (2008) 23(2) *Australian and New Zealand Journal of Public Health*, p 214.

	<ul style="list-style-type: none"> <li>▪ <i>Bringing Them Home (BTH) Program</i>, which provides counselling to individuals, families and communities affected by past practices regarding the forced removal of children from Indigenous families.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ <i>Social and Emotional Wellbeing (SEWB) Regional Centre (RC) Program</i>, which funds SEWB RCs around Australia to provide professional support to Link-Up and BTH staff as well as other workers, especially mental health workers, to develop, deliver and purchase training, and to conduct activities to support this including developing cross-sector linkages and maintaining information systems.</li> <li>▪ <i>Mental Health Program</i>, which funds Mental Health Service Delivery Projects in Aboriginal Community Controlled Health Services (ACCHSs) nationally to develop and evaluate culturally appropriate approaches to mental health service delivery.<sup>90</sup></li> </ul>
Central Northern Adelaide Health Service Family and community healing Program	The Family and Community Healing Program addresses family violence by building community capacity to support safe families. It comprises a complex and dynamic set of group activities for Indigenous women, men and youth.
Family Wellbeing Project	The Family Wellbeing Project in Queensland is a community driven group project that aims to heal relationships and build stronger families and communities. It has been evaluated as part of the Empowerment Research Project, a partnership including local community organisations and the Cooperative Research Centre for Aboriginal Health (CRAH).
Seven Phases to Cultural Healing Model	Healing model developed by Indigenous psychologist, Rosemary Wanganen, to address contemporary social and health issues. Courses are run to enable health workers, social workers and psychologists to use the model in their practice with Indigenous clients.
Rekindling the Spirit	Family centred healing service in Lismore, NSW that addresses the harm of family violence and abuse. <sup>91</sup>

90 A Wilczynski, K Reed-Gilbert, K Milward, B Tayler, J Fear and J Schwartzkoff, *Evaluation of Bringing Them Home and Indigenous Mental Health Programs*, Report prepared by Urbis and Keys Young for the Office of Aboriginal and Torres Strait Islander Health, Department of Health and Ageing (2007), p i.

91 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 55.

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Yorgum Aboriginal Family Counselling Service	Perth based Indigenous controlled and staffed counselling and community development service assisting victims of family violence, sexual abuse and Stolen Generation members. <sup>92</sup>
Western Australian Healing Project	A collection of healing projects run in a variety of urban, rural and remote Indigenous communities aimed at addressing sexual violence. <sup>93</sup>
Men's groups	<p>Men's groups are an important healing tool. There are many examples across the country including:</p> <ul style="list-style-type: none"> <li>▪ Yerli Berko, the Spirited Men Group and Tau Ngaraldi Program;<sup>94</sup> and</li> <li>▪ Mount Isa Men's Group run in conjunction with the Mount Isa Murri Court to deal with offending.<sup>95</sup></li> <li>▪ Evaluation and research for support men's groups/ men's sheds is being coordinated by the CRCIAH in the Mibbinbah project with sites across Australia.</li> </ul>
Yula Panaal Cultural and Spiritual Healing Program	The Yula Panaal Cultural and Spiritual Healing Program is run by Yulawirri Nurai, and is an accommodation facility/ healing centre for Indigenous women exiting the NSW prison system. <sup>96</sup>

I have started to detail in this chapter the foundations for the healing work that needs to take place among Indigenous communities throughout Australia. These foundations for healing need build on the experiences of trauma experienced by Indigenous peoples, as well as the cultural and spiritual responses to trauma being generated by Indigenous peoples.

Many Indigenous peoples, both individually and collectively, have already started the work of healing in their lives. What is needed now is a national Indigenous healing body, to ensure that the value of the healing work that remains to be done is understood and adequately resourced. The question that people have been deliberating over with regards to this national body is what kind of body it should be, which I will go on to discuss in part five of this chapter.

92 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 64.

93 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 69.

94 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 97, 105.

95 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 179.

96 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007), p 64.

## Part 4: Learning from the Canadian healing journey

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Australia is not the only country in the world with a history of dispossession and violence towards their indigenous population. But unfortunately, Australia lags behind other comparable countries in the journey to provide redress for historical and contemporary traumas. There is a great deal that Australia can learn from the progress of other countries further down the road of Indigenous healing.

Canada provides an interesting model of healing that points to lessons and strategies that can be applied in the Australian context. Although Canada is not the only country pursuing healing,<sup>97</sup> it does seem to be the most advanced and thoughtful model of healing at this point of time. Of course, it is not perfect but I believe the limitations of this model also provide crucial lessons for developing a better approach to healing in Australia.

### 1. Towards healing in Canada

The developments in healing in Canada have emerged in response to the 1996 Royal Commission on Aboriginal Peoples. The Royal Commission covered a broad range of issues relating to Aboriginal peoples and their relationship with the Canadian government. Special urgency was given to addressing the impacts of abuse in residential schools.

Like Australia, generations of Aboriginal children were taken away from their families. In Canada between the 1800s and 1990s, over 130 government funded church run industrial schools, boarding schools and hostels operated for Aboriginal children. Many of these children suffered physical and sexual abuse, as well as the loss of family, community and cultural connection. It is estimated that there are approximately 86 000 survivors of the residential schools alive in Canada today and 287 350 people are estimated to have been intergenerationally impacted.<sup>98</sup>

In 1998 the Canadian government issued a 'Statement of Reconciliation' and the 'Gathering Strength – Canada's Aboriginal Action Plan'. There has been some debate about whether the Statement of Reconciliation constitutes a true apology given that it only apologises for the physical and sexual abuse suffered by children in the residential school system, rather than the entire policy of forcible removals. Much like the Australian situation, the status of the apology remained an open wound for

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97 Other countries such as New Zealand and United States have developed healing programs that involve traditional healing methods, combined with Western therapeutic methods. A more detailed examination can be found in: L Archibald, *Decolonization and Healing: Indigenous Experiences in the United States, New Zealand, Australia and Greenland*, Aboriginal Healing Foundation (2006). The *Social Justice Report 2000* gave an overview of the principle of reparations in international law and examples from overseas jurisdictions. This included examples of Indigenous healing initiatives undertaken in other countries such as Canada, New Zealand and South Africa: *Aboriginal and Torres Strait Islander Social Justice Commissioner, Social Justice Report 2000*, Human Rights and Equal Opportunity Commission (2000), p 133–154. In addition to healing programs, reparations models have been established in the wake of internal conflicts and state crimes in the form of truth and reconciliation commissions. South Africa is usually held up as the model for truth and reconciliation commissions but they also exist in Ghana, Liberia, Morocco, Rwanda, Sierra Leone, East Timor, South Korea, Argentina, Chile, El Salvador, Guatemala, Panama, Peru and Fiji.

98 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Fund, Summary of Key Points* (2006), p 26.

many, until 11 June 2008, when the Prime Minister of Canada gave an official national apology to former students of Indian residential schools for Canada's role in the Indian residential schools system.

However, part of the Gathering Strength Action Plan was a one-off \$350 million grant for healing programs to address the physical and sexual abuses that occurred in the residential schools. This led to the development of the Aboriginal Healing Foundation.

### 1.1 Aboriginal Healing Foundation

Three months later, in March 1998, the Aboriginal Healing Foundation (AHF) came into being. The AHF was established as an independent, Aboriginal run corporation separate from government. Subsequent funding allocations have seen the AHF extended until 2012.

In 2000 the AHF also established a charitable organisation, Legacy of Hope, to work in conjunction with AHF and eventually take over operations when the AHF mandate ends.

#### (a) Aims, representation and governance

Before the Canadian government agreed to fund \$350 million to the AHF, there was intense negotiation with Aboriginal representatives about the scope of the foundation, its representation, governance and accountability. Despite robust advocacy on the part of the founding board members, the government was determined that the healing should be limited to respond only to the legacy of physical and sexual abuse suffered in residential schools, echoing the sentiments of the Statement of Reconciliation. As a concession, the government broadened the scope to include the intergenerational impacts of this physical and emotional abuse.

The AHF developed robust representation and governance structures. The AHF is made up of board of directors of 17 Aboriginal peoples, many of whom are either survivors or family of former residential school students and also represent the main Aboriginal groups across Canada. The board of directors are appointed by 'Aboriginal political organisations, the federal government and the Aboriginal peoples at-large'.<sup>99</sup>

It should be noted that the consultation period for the development of the AHF was very short. Aboriginal groups were in a difficult position: either they came together quickly to form some sort of body, or they risked losing the promised funds forever.<sup>100</sup>

A large conference representing most of the Aboriginal groups in Canada was held in July 1998. This conference was the first real opportunity for the community at large to engage with the concept of a healing foundation and be involved in setting its direction. Text Box 7 reproduces the recommendations that the conference made to board members. These goals have largely been included in the mission statement and used as a point of reference for evaluation and strategic planning (with the exception of the recommendation about the composition of the board being made up solely of survivors and one Elder). The conference also provided an opportunity for the board to begin the process of building up trust with Aboriginal communities.

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99 Aboriginal Healing Foundation, *2007 Annual Report* (2007). At <http://www.ahf.ca/about-us/annual-reports> (viewed 7 November 2008).

100 M Castellano, *Final Report of the Aboriginal Healing Foundation*, Volume I, *A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p14.

**Text Box 8: Recommendations to board members of the Canadian Aboriginal Healing Foundation<sup>101</sup>**

1. Board members should be on their own healing journey: sober, drug free and walk their talk. Board members need to be role models.
2. Board and staff should have a code of ethics.
3. Survivors need to be strongly recognized on the Board.
4. The Foundation must establish and build trust.
5. There should be ownership of the Foundation by the communities it serves.
6. The Board should stay at the grass roots level and not place too much priority on administration. Professional help is needed by all members of survivors' families.
7. The Board membership should be restricted to survivors and one Elder.
8. The Board communicate with survivors by a communication which is truthful, honest and open.
9. The way of operating be traditional and holistic.
10. Foundation bylaws should not conflict with existing treaties and research should be done with respect to any conflict with the Charter of Rights and Freedoms.

The AHF is accountable through its Funding Agreement with the Canadian government which requires full annual reporting and independent audits. To date, the AHF has managed large amounts of money in a transparent and accountable way and has become a model of good governance in Aboriginal organisations in Canada.<sup>102</sup>

**(b) Program Funding**

The AHF has had an enormous task allocating and managing funding to healing programs across Canada, with 1,345 grants to date. There is a diversity of healing projects that have been funded but all have had to meet mandatory criteria requiring that they:

1. Address the legacy of physical and sexual abuse in residential schools, including intergenerational impacts. This must be reflected in the project's goals, description and work plan.
2. Show support and links. A project must have community support in order to be funded. It will have more impact when it is linked with health, social services and other community programs.
3. Show how it will be accountable to Survivors, to the community where the project will take place, and to the target group who will benefit from the project.
4. Be consistent with *Canada's Charter of Rights and Freedoms*.<sup>103</sup>

101 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I, A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 19.

102 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I, A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 14.

103 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 44.

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The projects fall into the categories (mentioned previously in Part 3) of 'reclaiming history; cultural interventions; and therapeutic healing' and include:

- sweat lodges;
- spiritual and cultural ceremonies;
- healing circles;
- counselling by Elders;
- traditional healers;
- medicine wheels;
- western style individual and group counselling;
- alternative therapies like massage and reiki;
- education about the residential school experience and legacy; and
- research.

The largest proportion of funding, 62% goes to direct healing services such as counselling and culture based activities; 14% goes to prevention and awareness initiatives; 8% goes to increasing knowledge about the residential school system; 7% goes to training; 3% for needs assessment; 1% for project design support; and 2% for conferences.<sup>104</sup>

Following difficulties in the first funding cycle due to community organisations not meeting the funding proposal guidelines, Community Support Coordinators were employed. The Community Support Coordinators were placed in the major regions and included native Inuktitut and French speakers to accommodate non English speakers. Special efforts were made to help communities 'access writers and skills to translate good ideas into fundable proposals'.<sup>105</sup> Oral communication styles were also accommodated by allowing oral video submissions.

### (c) Research and evaluation

Although the research arm of the AHF is only small, with only three core employees and an additional three contract workers, the impact and output of their research has been significant. The AHF has undertaken innovative research on issues related to healing such as suicide, addictions, foetal alcohol syndrome, family violence, elder abuse and perpetrator programs. The AHF research on healing is unique and utilised internationally to support healing initiatives with indigenous peoples.

Evaluation has been built into all AHF processes and the activities have been extensively evaluated as part of the final report in 2006. These evaluations have drawn some powerful lessons about what healing is and how the healing process can be supported and improved. Evaluation of the AHF has led to research that has mapped what the healing journey has been for communities and individuals, what supports healing, how to engage communities that might not be ready for healing and what makes a good healer. This evidence is invaluable because it builds theory on healing that is grounded in real life practice.

The experience of the AHF has also demonstrated a good model of evaluation for healing programs. The AHF has been able to develop meaningful evaluation measures that reflect the impact of their work. Initially, there was an expectation that the research process would be able to evaluate whether healing was leading to improvements in key indicators around physical and sexual abuse, children in care, suicide and

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104 Aboriginal Healing Fund, *An Update on the work of the Aboriginal Healing Foundation* (2008). At <http://www.ahf.ca/> (viewed 11 November 2008).

105 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 42.

incarceration.<sup>106</sup> However, the AHF took the approach that these things would take much longer to change than the evaluation period. This led to much more sensible measures of progress revolving around:

- Increased awareness of the legacy of physical and sexual abuse in residential schools;
- Increased numbers engaged in healing with positive results;
- Increased capacity to facilitate healing;
- Increased partnerships; and
- Increased support from related organizations and community leadership.<sup>107</sup>

The evaluation has also been influential in documenting the reach of the AHF programs. It is estimated that 204 564 people had participated in healing projects up to 2004. Of those, only 33% of participants had been engaged in healing before.<sup>108</sup>

In interviews with participants, 57% noted an improvement in their goals with improved self-awareness, relationship with others, knowledge and cultural reclamation. The majority of participants reported feeling better about themselves through improved self esteem and the opportunity to work through trauma.<sup>109</sup>

The AHF has also looked at the community wide healing process. Based on the level of understanding and awareness of the legacy of the residential schools; number of participants in healing; and the level of capacity to deliver healing programs:

- 20% of communities are just beginning healing;
- 69.5% of communities accomplished a few goals, with much work remaining; and
- 14.1% of communities accomplished many goals but with only some work remaining.<sup>110</sup>

The evaluation also captured the magnitude of the need. 56% of funded projects could not meet healing needs and 36% maintain a waiting list. It was estimated that an additional \$140 855 595 would be required to meet these needs.<sup>111</sup> This sort of evidence has been instrumental in arguing for funding extensions for the AHF.

The message from evaluation was loud and clear, healing is a long term process and needs to be funded commensurate with the level of need.

#### **(d) Sustainability**

Given the time bound nature of the AHF, part of the funding criteria has been to demonstrate how the program would be sustained after the funding period draws to a close. Partnerships have been strongly encouraged with 72% of projects being linked

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106 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 94.

107 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 95.

108 Aboriginal Healing Fund, *The Aboriginal Healing Foundation; Summary Points of the AHF Final Report* (2006). At <http://www.ahf.ca/publications/evaluation-series> (viewed 13 November 2008).

109 Aboriginal Healing Fund, *The Aboriginal Healing Foundation; Summary Points of the AHF Final Report* (2006). At <http://www.ahf.ca/publications/evaluation-series> (viewed 13 November 2008).

110 Aboriginal Healing Fund, *The Aboriginal Healing Foundation; Summary Points of the AHF Final Report* (2006). At <http://www.ahf.ca/publications/evaluation-series> (viewed 13 November 2008).

111 Aboriginal Healing Fund, *The Aboriginal Healing Foundation; Summary Points of the AHF Final Report* (2006). At <http://www.ahf.ca/publications/evaluation-series> (viewed 13 November 2008).

with other organisations.<sup>112</sup> This has also meant organisations accessing funding from other organisations and federal and provincial/ territory governments.

### 1.2 Compensation for residential school survivors

Despite a similar history to Australia, Canada has a dramatically different experience in provision of compensation to residential school survivors. In response to the Gathering Strength Action Plan the Canadian Government began exploring options for resolving the large number of compensation claims regarding abuse. In 2001 a federal government agency, Indian Residential Schools Resolution Canada (IRSRC), was established to oversee this process.

In 2002 the IRSRC released a National Resolution Framework. The centrepiece of this framework was alternative dispute resolution (ADR) to achieve monetary compensation for survivors of the residential school system without the need for litigation.

There were high hopes for ADR as a way to deal with a large number of claims in a speedy way. In 2002 already 8 000 claims had been made against the Canadian government. The Government estimated it would take the court 53 years to process these cases, at a cost of \$2 billion in administration costs alone.<sup>113</sup> Further, given the advanced age of survivors, the likelihood of them achieving compensation in their lifetimes was slim.

Unfortunately ADR failed to deliver on its promise. In 2005 only 93 cases had been processed. At that rate, it would take 30–53 years to process all the claims and the administrative costs would be four times greater than the actual cost of settlements.<sup>114</sup>

There was also dissatisfaction about some of the fairness of the process with large discrepancies in settlement outcomes depending on location and who was responsible for the school. Concerns were also raised about how the Canadian government applied the relevant tort law in the claims. For instance, Dr Greg Hagen a legal expert who has worked extensively on settlement issues cited the example of Flora Merrick who:

[W]as awarded a measly \$1,500 award for being beaten and locked in a small, dark room for two weeks for escaping the school's inhumane treatment. Canada is appealing the finding on the basis that the school's behaviour met the standards of the day with litigation fees likely much higher than the award itself.<sup>115</sup>

In 2005 the Canadian government commenced negotiations with survivors of the residential system and churches to come to an agreement for all survivors, not just those who had suffered physical and sexual abuse.

In May 2006 the Indian Residential Schools Settlement Agreement was announced.<sup>116</sup> The agreement was reached between the Canadian government; the Assembly of First Nations (the national representative body for indigenous peoples of Canada); legal representatives of residential school survivors; and legal representatives of the churches who ran the residential schools. It is the largest settlement in Canadian history, worth \$1.9 billion in compensation alone.

Key features of the Indian Residential Schools Settlement Agreement are:

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112 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 101.

113 G Hagen, 'Commentary: on ADR for residential school claims', *Lawyers Weekly*, 1 April 2005. At <http://www.lawyersweekly.ca/index.php?section=article&articleid=62> (viewed 12 November 2008).

114 G Hagen, 'Commentary: on ADR for residential school claims', *Lawyers Weekly*, 1 April 2005. At <http://www.lawyersweekly.ca/index.php?section=article&articleid=62> (viewed 12 November 2008).

115 G Hagen, 'Commentary: on ADR for residential school claims', *Lawyers Weekly*, 1 April 2005. At <http://www.lawyersweekly.ca/index.php?section=article&articleid=62> (viewed 12 November 2008).

116 The complete agreement, court documents and commentary can be found at [http://www.residentialschoolsettlement.ca/english\\_index.html](http://www.residentialschoolsettlement.ca/english_index.html) (viewed 12 November 2008).

- A common experience lump sum payment to survivors of \$10 000 for the first year plus \$3 000 for each year after;
- An Independent Assessment Process for survivors who have suffered physical and sexual abuse, or abuses that have resulted in psychological harm;
- Advance payments for claimants over 65;
- Establishment of a Truth and Reconciliation Commission;
- Additional \$125 million for the AHF to extend its work by five years;
- \$20 million for commemoration activities; and
- \$100 million contribution from relevant churches towards healing initiatives.

### 1.3 Truth and Reconciliation Commission

The Truth and Reconciliation Commission (TRC), an outcome of the Indian Residential Schools Settlement Agreement, began its work on 1 June 2008. It is still in the setting up phase, so we can't ascertain how it is progressing yet. Nonetheless, the model is unique and has some interesting features.

The TRC is a court-ordered body, with the court playing an ongoing role in the implementation and supervision of the TRC.<sup>117</sup> This is the first time a TRC has been set up in this way. Other TRCs around the world (South Africa is the most well known example, set up to deal with the atrocities of apartheid) are government bodies. Many other TRCs also have powers to bring criminal charges, the Canadian TRC does not.

The Canadian TRC is voluntary and victim focused. Its primary goal is to give survivors of the residential school system an opportunity to share their stories. These stories will be documented and contribute to the Canadian TRC's other goal of developing a comprehensive historical, public record to inform the nation.<sup>118</sup>

While other TRCs around the world are also victim focused, there is also an emphasis on engaging those who perpetrated violence and abuse. In the Canadian model, those involved in the running of the residential school system are welcome to share their stories but it is not a specific focus. The larger focus seems to be on reconciliation and commemoration through raising public awareness and ensuring the legacy of the residential schools system is understood.

## 2. Lessons from Canada for Australia

The situation in Canada is by no means perfect and there are fundamental problems in grafting a Canadian model onto the Australian Indigenous landscape. However, I believe that there are some valuable lessons that can guide our own progression towards healing in Australia, particularly through a national Indigenous healing body. Sometimes these lessons come out of the successes, and other times they come out of the challenges, but they should always be viewed within the context of Australia's social, political and economic realities.

### 2.1 Adopt a broad scope and realistic time frame for healing

One of the first battles of the AHF was negotiating a sufficiently broad scope to address community wide healing needs. The Canadian government originally only

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117 Truth and Reconciliation Commission, *Truth, Healing and Reconciliation* (2008). At <http://www.trc-cvr.ca/pdfs/20080818eng.pdf>, (viewed 13 November 2008).

118 Truth and Reconciliation Commission, *Truth, Healing and Reconciliation* (2008). At <http://www.trc-cvr.ca/pdfs/20080818eng.pdf>, (viewed 13 November 2008).

wanted the AHF to address the healing of residential school victims of physical and sexual abuse. The AHF board members successfully negotiated for an expansion to the intergenerational effects on the survivors' families. Given what we know about the intergenerational effects of trauma, this has covered a broad range of individuals and issues.

The focus on physical and sexual abuse omits other significant losses inherent in the residential school process, like loss of family relationships, language, culture, identity and self esteem. However, the AHF has been sufficiently flexible to accommodate a broader vision of healing but it is a shame that comprehensive recognition of what healing entails wasn't established from the beginning.

In developing an Australian model consideration should be given to looking at healing in its broadest terms, not just for Stolen Generations, but their families and communities. Healing should not only address the forcible removal but trauma arising from other sources and the related issues like family violence, alcohol and other drug use and incarceration that flow from trauma.

The AHF has a limited term. Although the initial period has been extended out until 2012 that is still a relatively small period of time given the magnitude of the healing needs. The AHF research suggests an average of 10 years is required for a community to 'reach out, dismantle denial, create safety and engage participants in therapeutic healing',<sup>119</sup> and this is just the beginning of the process. Similarly, in Australia we need to undo over 200 years of trauma. This will take a significant period of time and we need to be realistic about this or we will not meet the expectations, the therapeutic need and we will be setting healing processes up for failure.

## 2.2 Create an independent, indigenous controlled healing body

Part of the success of the AHF is its independence from government and its community control. This is an expression of self determination and empowerment, which in and of itself is a powerful step in the direction of healing and reconciliation. The AHF has been well managed, with good governance and accountability and is considered a model of excellence in Aboriginal controlled organisations in Canada.

Whether or not a healing body in Australia has a direct funding or service provision role is not clear, but regardless it should maintain its independence from government and be managed by Indigenous peoples.

## 2.3 Compensation and healing are related but can be pursued separately

The Canadian government, in conjunction with the relevant churches have gone down the road of providing compensation through the Indian Residential Schools Settlement Agreement. This is a momentous agreement and provides a model of good negotiation but it also shows that healing and compensation need not be pursued together. The Canadian Aboriginal organisations were pragmatic enough to know that the offer of funding for a healing fund was a once in a lifetime opportunity and would meet a deep need in their communities. The strategy of remaining separate from the protracted legal processes of compensation helped to secure this offer of funding for healing services.

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119 Aboriginal Healing Fund, *The Aboriginal Healing Foundation; Summary Points of the AHF Final Report* (2006). At [www.ahf.ca/pages/download/28\\_13239](http://www.ahf.ca/pages/download/28_13239) (viewed 13 November 2008).

## 2.4 Proper consultation and engagement

The AHF had a ridiculously short period of three months to set up the foundation. This did not leave enough time for proper community consultation and engagement. Consequently, the AHF board had a difficult road to acceptance. They held a major conference with community members shortly after, but even then there were still misplaced community expectations about what the AHF could do.<sup>120</sup> This was also reflected in the first round of funding proposals, where it was clear that some organisations did not have a clear idea about what the AHF could fund.<sup>121</sup>

This points to the clear need to conduct extensive consultation and engagement in the Australian context. Again, not just consultation with Stolen Generations groups but a broad range of community stakeholders. I would also suggest Indigenous men's groups be particularly involved. Indigenous men are often painted as the problem by mainstream media when in fact many have shown a real commitment to individual and community healing.

## 2.5 Credible, respected leadership

The AHF has been strengthened by good moral community and professional leadership since its inception that has provided the foundation for advancing the AHF's work. In Canada, the Assembly of First Nations (AFN) enjoyed twenty years experience, national leadership and credibility, and thus was an appropriate auspice agency for the creation of the AHF. In Australia, since we currently have no credible national equivalent to the AFN, it will be even more necessary to ensure the independence, moral leadership, professionalism and credibility of the Board. Commentators in Australia have noted the importance of having a strong community-based and professional leadership at the helm, driven by Indigenous peoples with the relevant healing, professional therapeutic and management experience and skills. This will be more likely to ensure that the work of the foundation comprehensively addresses the different areas of need.<sup>122</sup>

Similar to the role played by the Assembly of the First Nations, Indigenous leadership in Australia would also be assisted by the creation of a National Indigenous Representative Body.

Similarly, in the Canadian experience the presence of a Treaty formed an important basis for negotiations with the government on the establishment of an independent Aboriginal controlled healing foundation. Respondents to our consultations in Australia have similarly reflected that there is a need for a treaty to provide a foundation for establishing a framework for healing and for ensuring government accountability for Indigenous issues.

## 2.6 A central role of research and evaluation

Research and evaluation have been built into the AHF from the very outset, not as a hurried add-on towards the end of a funding cycle. This has led to accountability by assessing if funded programs are delivering outcomes.

Research and evaluation create an evidence base that justifies and sustains programs. Providing evidence on the efficacy of healing programs increases its acceptance with government and other funders. The Australian Government has repeatedly spoken of

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120 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 20.

121 M Castellano, *Final Report of the Aboriginal Healing Foundation, Volume I A Healing Journey: Reclaiming Wellness*, Aboriginal Healing Foundation (2006), p 21.

122 G Phillips, Personal communication with Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, 11 November 2008.

the need for evidence based policy. These sorts of authoritative evaluations are our way of responding to ensure that healing programs get funding in the first place and are sustained into the future.

The research arm of the AHF has also led to significant new knowledge. Healing is an area of innovation, especially in Australia, so there is a lot of fresh research ground for a healing body in Australia. The research generated could have utility in evaluating programs; developing the theory on healing in the Australian context; and undertaking historical and commemorative work about past racist policies.

### 2.7 Building partnerships

AHF funded projects are usually run in conjunction with other organisations, and frequently provincial, territory and federal government agencies. This promotes joint work, prevents siloing of healing services and builds the sustainability of the programs in the long term. This should be a guiding principle in any Australian healing body.

Beyond the AHF projects, Legacy of Hope, the charity associated with the AHF has created some good links to the corporate and philanthropic sector. There is good will and generosity in the corporate sector in Australia too. A healing body should strongly engage with these alternative sources of support.

### 2.8 Creating acceptance for healing in mainstream services

One of the best outcomes of the AHF has been the promotion of healing recognised as a legitimate approach to a wide range of problems. Mainstream organisations and government departments have adopted healing approaches in their programs based on the success of AHF healing programs and the evidence that supports them.

A powerful example is the Stan Daniels Healing Centre, which is actually a federal correctional centre based on Aboriginal spirituality and healing models. It almost seems a contradiction in terms to have a 'healing' correction centre but the Stan Daniels Healing Centre was favourably evaluated in 2006<sup>123</sup> and now accepts non-Aboriginal residents.

A healing body in Australia could have similar capacity to educate about healing and promote programs and approaches that are successful for integration into mainstream service delivery.

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123 Correctional Service of Canada, *Evaluation Report: The Section 81 Agreement between the Native Counselling Services of Alberta and the Correctional Service of Canada*, The Stan Daniels Healing Centre (2006). At <http://www.csc-scc.gc.ca/text/pa/ev-sdhc-394-2-30/toc-eng.shtml#ack> (viewed 12 November 2008).

## Part 5: A national Indigenous healing body

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The literature review, case studies of healing programs in Australia and a consideration of the Canadian healing experience provide a knowledge base for progressing healing in Australia. The next step in moving healing forward on the national policy agenda is consultation with the Indigenous community.

As part of the research for this chapter I sought feedback from individuals and representative organisations with expertise and experience in Indigenous healing programs, policy and research and related areas on the development of a national Indigenous healing body in Australia.

This was not a community consultation nor was it comprehensive due to the limited resources available. I sought information from 43 individual and organisations and received 18 responses in writing as well as through phone calls, meetings and forums<sup>124</sup> as appropriate. The respondents included a number of Stolen Generations organisations, researchers, policy makers and practitioners in the field of Indigenous healing.<sup>125</sup>

While this consultation should in no way be considered complete, it still provides some valuable initial thoughts on what is important in healing and how we might move forward. As a starting point I asked respondents:

1. What should be the main roles and functions of a national healing body?
2. What kind of relationship do you see a national healing body having with existing healing programs and Indigenous-controlled health services?
3. Do you believe a healing body should be federally based or state/ territory based?
4. Apart from a healing body, are there any other policy models that you believe would advance and support healing programs in Aboriginal communities?
5. Please provide examples of initiatives and/ or research that have been undertaken to date by Indigenous peoples to advance the development of policy/ programs or projects relating to healing in Australia.

This section will summarise the key issues raised in response to these questions.

### 1. Concepts of Indigenous healing

The responses are consistent with the concepts of healing presented in Part 2 of this chapter and highlighted that any discussion of Indigenous healing needs to start with an understanding of what the concept of Indigenous healing is.

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124 Such as the FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008.

125 Respondents were: Australians for Native Title and Reconciliation; Balunu Foundation; Cooperative Research Centre for Aboriginal Health; Link-Up (NSW); Link-Up (Wyndham); Nunkuwarrin Yunti (South Australia); Red Dust Healing Program; Secretariat of National Aboriginal and Islander Child Care (SNAICC); Spirit, Body, Mind and Heart Working Group (Chair – Helen Moran); Stolen Generations Alliance; Telethon Institute for Child Health Research; WA – Bringing Them Home Committee; Stolen Generations Victoria; David Hollinsworth; Dorinda Cox; Gregory Phillips; Judy Atkinson; Lorraine Peters, and Rosemary Wanganeen.

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The key themes that emerged in relation to the concept of healing were:

- Indigenous healing is a long term response to address the trauma resulting from colonisation and forced removal of children from their families.
- While Indigenous healing overlaps with other areas including social and emotional well being, mental health, and medical based therapeutic models, it is also distinct from these. Elements of these other areas contribute to healing, but healing is not limited to any of these.
- Cultural identity and cultural renewal are central features of Indigenous healing processes.
- Healing is a very personal process, and necessarily requires different approaches and processes for different people.
- Healing is not limited to the individual. It extends to healing of the family, the community and of the nation.

Text Box 9 provides a selection of quotes from respondents on what healing means to them.

### Text Box 9: Selected quotes from respondents on the concept of healing

At its heart healing is about restoring balance where wrong has been done, – a spiritual process that includes therapeutic change and cultural renewal. It is about protection and care for the victims of violence and abuse as well as the development of correctional services for perpetrators that are based on healing and change, not stigmatisation and shame.<sup>126</sup>

Healing is an education process of awakening, learning about the self, having an ever-deepening self-knowledge and a returning to wholeness that leads to transformation, transcendence and integration. It happens through the experience of safety, community support, re-building a sense of family and community, using ceremony and strengthening cultural and spiritual identity.<sup>127</sup>

The main principle of healing is about being connected to country. Healing is about working with individuals, families and community. It is about changing unhealthy relationships with each other... about having a vision of getting well.<sup>128</sup>

Healing is a holistic, intergenerational experience of coping and surviving past injustices.<sup>129</sup>

As noted in Part 2 of this chapter, healing is not always well understood. It was reported that the term 'healing' is not widely used by all Indigenous communities because there isn't a clear understanding of what it entails. However, this is starting to change. For instance in Western Australian Indigenous communities, some practitioners noted that there has been a growing awareness of the concept of healing and a corresponding

126 G Phillips, 'Healing and public policy' in J Altman and M Hinkson Eds. *Coercive Reconciliation*. North Carlton, Arena Publications Association, 2007, pp141–150, cited in Melisah Feeney, 'Reclaiming the Spirit of Well Being: Promising healing practices for Aboriginal and Torres Strait Islander people – Discussion Paper', Stolen Generations Alliance, August 2008.

127 J Atkinson, In discussions during FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008.

128 Yorgum Healing Centre, *Yorgum Healing Centre* (Paper for the FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008).

129 N Yunti, Correspondence to the Aboriginal and Torres Strait Social Justice Commissioner, Australian Human Rights Commission, 22 September 2008.

increased demand for healing programs and services. Dorinda Cox from the Western Australian Healing Projects notes:

People didn't used to talk about healing or even the process, or they might talk about the process without having healing. Now people are saying we want more healing in WA.<sup>130</sup>

To address this knowledge gap, it was recommended by respondents that there needs to be widespread community consultations and awareness raising sessions with Indigenous communities about Indigenous healing. This would develop an understanding of what healing is, the manifestations of healing not taking place, and how needs for healing can be met.

Respondents raised concerns that there is equally a lack of understanding among parliamentarians, government departments and service providers about healing, and what it means in the Indigenous context. There needs to be training and education for government officials among others about the traumas that Indigenous peoples face and what Indigenous healing is. This should then inform government's capacity to develop effective healing strategies. Glendra Stubbs from NSW Link-Up stated:

There was a generally positive response to the parliamentary apology. Despite this, some people still can't understand the wide affect on Indigenous people from enforced loss of family. How can these removal policies have had such a large affect on individuals across Australia and how can this correspond to the social problems of Indigenous people today? There is the grief of parents, interruption of family and community structure where people have been taken and ties of children to their family and culture. We see the turmoil of people trying to fit back into their families' lives and the pain when this does not happen. It has an affect on lives and impacts on the family structure, on parenting skills and social behaviour.<sup>131</sup>

The respondents supported a wide ranging definition of healing, so that the intergenerational effects of trauma are recognised and healing is not just limited to issues of forced removal. Nonetheless, respondents also noted the importance of healing for Stolen Generations members, as a distinct and important part of healing for Indigenous communities generally. Helen Moran and Sally Fitzgerald state:

For Indigenous people individual well-being is related to the well-being of the entire community. Thus the healing of the Stolen Generations impacts on the healing of the entire community. Judy Atkinson speaks of the historical layering of transgenerational and intergenerational traumas of which the Stolen Generations are a contemporary core, and to be truly holistic, the historical and compounded complex traumas shared by all Indigenous Australians must be addressed – as must the associated healing of non-Indigenous Australians as well. The Stolen Generations are the corner stone for healing Indigenous Australia. The specific healing needs of the Stolen Generations are integral to, yet distinct from the healing needs of the wider Indigenous communities; with the healing for one tied inextricably to the other.<sup>132</sup>

The respondents expressed a diversity of views on how to define healing and what purposes it can fulfil, but there is a consensus about the need for healing in order to address the intergenerational impacts of colonisation and past policies. Further,

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130 D Cox, Phone conversation with staff of Social Justice Unit, Australian Human Rights Commission, 22 October 2008.

131 G Stubbs, *The context of healing* (Paper for the FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008).

132 H Moran & S Fitzpatrick, *Healing for the Stolen Generations – A Healing Model for All* (Paper for the FaHCSIA Indigenous Healing Forum, Canberra, 16–17 September 2008). The need for distinct healing programs for Stolen Generations members, developed in consultation with Stolen Generations members were also reflected by the Stolen Generations Alliance.

healing is commonly conceptualised as part of the restorative and reparation process spoken of in the *Bringing them home* report.<sup>133</sup>

## 2. What are the Indigenous healing needs?

The need for Indigenous healing was seen by respondents as fundamental to enabling Indigenous communities to provide the firm foundations from which to develop and advance. One respondent used the analogy that putting in place measures in Indigenous communities that have not accessed healing is like building a house on quicksand. Alternatively, putting in place measures with a community that has recaptured their cultural identity and healed is like building a house on firm earth.

Respondents stated that Indigenous healing is not a side issue, but central to and a necessary precursor for governments' to meet their commitments to overcoming Indigenous disadvantage and 'closing the gap' in health, education, employment and other areas.

There are four critical needs in Indigenous healing that the respondents identified. Firstly, that there must be a wide range of healing options because healing is such an individual process. Having a range of therapeutic, narrative therapy, cultural and spiritual approaches available enables the individual to choose the healing service or program that best suits them. The key factor here is having a choice among a diverse range of healing options, that are culturally informed and community based.

Having a choice is also important because people may need different services/ programs at different stages of the healing process. As one respondent noted, healing is a process, and often people with trauma need to first build their self-esteem and confidence and their trust in the people involved in the process, before they commence the healing aspects of the process. These preparatory stages can often take a couple of years, during which time people can often be involved in a range of cultural renewal programs and other activities. This builds up to therapeutic and other healing activities when they are ready.

A wide range of healing programs means that options can also be responsive to provide healing for families, communities, for elderly, for youth, for men, for women, and for the nation.

The range of healing programs suggested by the respondents reflects the variety of examples highlighted in Part 3 of this chapter. In summary, services could include:

- targeted healing programs and services for Stolen Generations peoples and their families (that address the impacts of forced removal and intergenerational trauma stemming from the forced removal);<sup>134</sup>
- healing programs and services for the wider Indigenous community, not limited to addressing impacts of forced removal, but extended to address trauma arising from other situations such as drug and alcohol abuse, family violence, and rehabilitative programs for incarcerated Indigenous peoples;
- crisis healing – short term, individual, immediate trauma relief on a daily basis;
- longer term restitutive/ rehabilitative healing process for individual and community based healing; and
- therapeutic, narrative, cultural or spiritual healing programs.

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133 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), p 392–396.

134 See Text Box 10 for a list of healing needs identified by respondents for Stolen Generations members.

**Text Box 10: Specific healing needs identified by Stolen Generations respondents**

- Crisis services to address immediate healing needs, including a 24 hour telephone counselling line.
- Drop-in centres and outreach support models of service delivery.
- ‘One stop shop’ providing multi-disciplinary services for Stolen Generation members in each state.
- A ‘gold card’ for Stolen Generations members to access health, healing and counselling services at concessional rates, similar to the provision for defence force veterans.
- Training and skills development programs to encourage Stolen Generations members to deliver healing programs.
- Former mission sites to be managed by Stolen Generations members or Indigenous organisations.
- Memorials to be erected in significant sites such as former institutions to commemorate members of the Stolen Generations who have passed away.
- Financial support for people to go to their country and do ‘finish up business’.
- A brokerage fund to support Stolen Generations members to undertake activities related to healing that are unavailable to them due to lack of resources, for instance education, support to publish their story, or assistance to purchase a computer.
- Modification of intake forms for social services to include a question on whether a client is a member of the Stolen Generations. This could assist with determining demand for services by Stolen Generations members and ensure they receive appropriate service responses.
- Increased funding for Link-Up caseworkers, commensurate with level of need.
- There is an urgent need for Link-Up service to expand in the short term due to Stolen Generations members and family advanced age. In NSW alone, Link-Up conducted nine grave side reunions were conducted in 2007.
- Increased funding for administration support in Link-Ups, including data-entry, upgrading data management systems, to ensure compliance with reporting requirements. This will free up caseworker’s time to spend with their clients.
- Funding for researcher positions, including genealogists, in Link-Ups to deal with records only inquiries. Other measures to facilitate more efficient research are permission to access key Electoral Commission information online and permission to use Medicare in forwarding requests to contact.
- Expansion of the Family Link positions in Link-Up to include identification of for kinship placements for Indigenous children requiring out of home care, in accordance with the Indigenous Child Placement Principle.
- Training programs for all mental health workers to increase their capacity to meet the specific needs of the Stolen Generations.
- Early intervention and family support programs to keep families together.
- Support for Indigenous peoples involved with the criminal justice system and in particular, juvenile justice clients, to reconnect with their families. Reports indicate that one third of all Aboriginal inmates in NSW had been removed from their parents as children; 31% of female inmates in NSW and 21% of male inmates reported that their parents had been forcibly removed from their families as children.

Secondly, healing services and programs need to be complemented by health and other support services and infrastructure, particularly in rural, regional and remote areas. Where possible local people need to be trained and employed to provide these services. Experience has repeatedly shown fly-in-fly-out options are not adequate to meet the community's needs on a daily basis.

Thirdly, respondents repeatedly noted that many Indigenous peoples organisations have been developing and delivering Indigenous healing programs, that are culturally appropriate and community based, for some years now.<sup>135</sup> However, the lack of on-going funding has limited the extent to which such programs and services are made available or accessible to Indigenous peoples. It is now time to resource these services properly and find ways to use existing knowledge and resources in other communities.

Lastly, respondents stated the need for skilled Indigenous personnel and workers to actually provide healing services and provide training. It is necessary to put in place programs that develop the capacities and skills of Indigenous peoples to provide a full range of healing services. In some instances this may mean providing interim training for people to become support workers, as waiting for people to obtain professional credentials can take too long. Once again, experience has shown that training someone from the local community who is regularly available and accessible to deliver the service is often more beneficial than flying in a professional on an occasional basis. What is needed is the development of a discrete workforce to work with individual Indigenous organisations and communities to develop their own local programs.

### 3. A national Indigenous healing body

There was widespread support among the respondents for a national Indigenous healing body to provide a national coordinated response, informed and controlled by Indigenous Australians.<sup>136</sup> To be expected, there were a range of views on what this should actually look like, ranging from those who argue for a funding body similar to the Canadian Aboriginal Healing Fund (AHF), to those who suggest a body with more of a research, education and advisory function.

#### 3.1 Common ground

There was also a lot of common ground in the responses. In general, the respondents were adamant that a national healing body should be independent from government, possibly a statutory body, with an Indigenous leadership. The national healing body should also be adequately resourced to carry out its functions with long term funding. Funding should be sourced from the federal, state and territory governments and private funding.

Finally all the respondents found value in learning from the Canadian AHF experience to ensure the problems are not recreated but the strengths can be replicated. In particular, unlike the Canadian AHF, an Australian national Indigenous healing body should not be finite or linked to the lifetime of the Stolen Generations members, but extend beyond to address the healing needs of their descendants. This is particularly important given the inter-generational trauma that has resulted from the forced removal policies. Respondents also identified some key principles that should underline a national healing body, provided in Text Box 11.

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135 See Text Box 7 for a list of existing healing initiatives identified by respondents.

136 One of the concluding resolutions from the FaHCSIA Indigenous Healing Forum was the in principle support for the development of a National Healing Foundation. FaHCSIA, *Papers of the Indigenous Healing Forum*, Indigenous Healing Forum, Canberra (16–17 September 2008).

**Text Box 11: Key principles for a national Indigenous healing body**

- *Self-determination* – the body should be independent with a board consisting of Indigenous members. The body should actively represent Indigenous communities and set its own priorities, whether that be through program funding; research and evaluation; or an educative and advisory role.
- *Human rights* – the body should promote the recognition, protection and realisation of Indigenous rights, as recognised in the *Declaration on the Rights of Indigenous Peoples* and international treaties ratified by Australia.
- *Community development approach* – developing community based initiatives which respond to community identified priorities and empower the community. Supporting community initiated, strengths based preventative interventions which rebuild community, family and individual capacity.<sup>137</sup>
- *Reconciliation* – healing is needed for the nation to acknowledge the harms of the past and address the inter-generational effects of historical trauma for Indigenous peoples to achieve equality in life chances.
- *Grounding healing in Indigenous culture and identity* – restoration of cultural provide, positive identity and understanding histories, ceremonies, languages and traditions promote collective healing and a sense of belonging.

Some of the common roles and functions identified for the body include:

- developing a national healing framework or strategy;
- consulting with Indigenous communities and other stakeholders (e.g. federal and state/ territory government departments, parliamentarians, etc.);
- funding Indigenous community controlled healing programs;
- researching healing programs currently with Australia and internationally, identifying and promoting best practices in Indigenous healing in Australia,<sup>138</sup> with a possible a clearing house role;
- public education for both Indigenous and non-Indigenous communities, fostering a greater understanding in the broader community of issues confronting Indigenous peoples, and particularly Stolen Generations;
- promoting reconciliation through community based cultural events and social activities that promote inter-cultural understanding and awareness;
- capacity building, professional training, accreditation and benchmarking for Indigenous community based healing programs, Link-Up and Bringing Them Home counsellors and other healing support workers;
- lobbying and advocacy for Indigenous healing and Stolen Generations;

137 Other principles and values that were identified as important for Indigenous healing generally included: focus on Indigenous culture and tradition, family based, linking therapeutic approaches to spiritual and cultural approaches, community support for healing and recovery, connection with country, trust, courage, connection, culturally appropriate, diversity, flexibility, respect for Indigenous protocols, recognition of Indigenous community knowledge, cultural safety.

138 A possible model to look to for how this function of the body could be fulfilled is the 'Canadian observatory on the justice system response to intimate partner violence' – an international network of researchers, practitioners and policy-makers from across many disciplines. It is a vehicle for conducting national research projects and international comparisons, and identifying future collaborative research directions (more information is available from their website at: <http://www.unb.ca/observ/index.php>).

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- reviewing federal government's policies on healing and policies relevant to Indigenous healing ;
- monitoring and evaluation of a national Indigenous healing framework/ strategy, other relevant policy areas and implementation of the *Bringing them home* report recommendations
- reporting to Parliament on Indigenous healing.

### 3.2 Alternative models

The consultations drew out some of the pro and cons of the main possible national healing body models that have been suggested so far. Some respondents saw the body as being responsible for delivering Indigenous healing programs. Within this approach there was an emphasis on the body funding Indigenous community controlled services, and the government funding government services separately.<sup>139</sup> Other respondents felt that, akin to the Canadian model, the body should not be responsible for delivering healing programs but for coordinating the funding of Indigenous healing programs across the nation.<sup>140</sup>

On the other hand, some respondents felt that a healing body should not be responsible for delivering healing programs or disseminating funding for Indigenous healing projects. Instead it should play a strong role in advising governments about the development and implementation of a national healing strategy. This strategy would involve the government funding a range of healing programs to be delivered by organisations across Australia. This sort of national body would also have a key role in research, education and evaluation to promote healing.

An advantage of the body taking an advisory role outlined by the respondents, is that responsibility for the provision of Indigenous healing services is retained as a government responsibility. This prevents healing being siloed off to another body that bears all the responsibility but without the full resources available to government. A strong advisory role the body could play an important part in guiding the development of a national healing strategy and ensuring it is implemented effectively. The body could act as a bridge between Indigenous communities and service providers and government to enable community directives and priorities to inform government funding. Conversely, some respondents suggested that a funding or service delivery model would be more responsive to community needs and be a step towards self determination.

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139 The Spirit Body Mind and Heart Working Group put forward a model that allowed for three funds – the Stolen Generations fund (which would fund healing programs for Stolen Generations members), the Community/ Family/ Individuals Fund (for funding programs for broader related Indigenous healing) and the National Healing Awareness fund (for funding awareness and education activities on healing, as well research on achieving restitution, rehabilitation and healing): H Moran & S Fitzpatrick, *Healing for the Stolen Generations – A Healing Model for All* (Paper prepared for the FaHCSIA, Indigenous Healing Forum, Canberra, 16–17 September 2008).

Gregory Phillips noted the option of creating a financial base for the body (perhaps \$500 million) that can be invested in a fund and managed professionally with a sound financial management plan. The interest and annual disbursements from the fund could be used to make grants to Indigenous healing programs – the priorities and criteria for which should be decided by the independent Indigenous professional and community-based Board: G Phillips, Communication with Aboriginal and Torres Strait Islander Social Justice Commissioner, 11 November 2008.

140 The WA Sexual Assault Resource Centre is another example of a funding model for healing programs. The Centre annually provides \$100,000 per region, and the use of funds evolves as a fluid process through community consultation and community identified solutions.

### 3.3 Who is the healing body for?

Some respondents had an expectation that the foundation would be specifically for addressing the needs of Stolen Generations members and their families. However, some of these expectations seem to have been as a result of communications with the government along these lines, rather than indicative of a desire to limit healing to Stolen Generations members.

Other respondents felt that as almost every Indigenous family has in some way been impacted upon by the forced removal policies. Therefore, any healing strategy for Stolen Generations should be inclusive of their families and communities, and such a scope would necessarily cover all Indigenous peoples. Other respondents extended this view further and argued that Indigenous peoples are experiencing a range of traumas, not only of forced removals, but also the wider impacts of colonisation, which have manifested in high levels of stress and disadvantage, drug and alcohol abuse, family violence, incarceration, poverty and racism.

Whatever the reasoning, a majority of respondents recommended a wide scope for healing that could address the full gambit of Indigenous healing needs within a single body. However, within this wide scope, there was acknowledgement that special attention, programs and funding needs to be allocated for addressing the specific needs of Stolen Generations members, and priority needs to be given to meeting these needs in light of the life expectancy of many Stolen Generations members.

### 3.4 Relationship with existing programs and Indigenous-controlled health services

There was consensus that a national body support and complement the work of Indigenous community based healing initiatives, such as the Indigenous controlled health services. The body could make an important contribution through its capacity building function to support the development of Indigenous community controlled services and programs. Peak organisations such as NACCHO will be important stakeholders for the body to liaise with but a national body should also link with regional and state/ territory bodies and organisations.

### 3.5 Relationship with governments

A majority of respondents felt that a national body would be best placed to put in place and coordinate a national healing framework that ensures consistency across the country. Some respondents felt this could be supplemented by state level healing bodies, with the possibility of representatives from the state healing bodies represented in the national body, or alternatively the national body could have state affiliates.

Given the breadth of areas that Indigenous healing can be linked with (for example health, mental health, social and emotion well-being, family violence, child protection, and offender programs to name a few), respondents noted the importance of having coordinated responses by federal and state/ territory governments. This could help overcome the current confusion about government responsibilities between federal and state/territory governments departments. This is particularly important given the need for cross-departmental holistic programs that address Indigenous healing. The national healing body would need to work with all levels of government.

Respondents also suggested that the COAG reconciliation framework could be revived as a means of securing a joint federal / state and territory agreement to jointly fund the establishment and operations costs of the body.

All of the respondents recommended extensive consultation as part of the process in developing a national healing body. A comprehensive national community consultation

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process is needed to ensure that Indigenous communities have an informed position on the scope, role and functions of the national Indigenous healing body. The consultations need to be conducted with Indigenous peoples and communities, Indigenous elders, Stolen Generations members, Indigenous organisations and representative bodies. Consultations need to be conducted in culturally appropriate ways.<sup>141</sup> One of the concluding resolutions from the FaHCSIA Indigenous Healing Forum was for the 'formation of a working party to manage the community consultation with government funding'. Similarly, an interim body may also be tasked to undertake consultations.

Consultations on the formation of a body also need to be undertaken with federal, state and territory governments, federal government departments, private and NGO sector stakeholders. There is no point establishing a body that will not be able to work effectively with these stakeholders.

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141 The *Declaration on the Rights of Indigenous Peoples* highlights states' obligations to consult with Indigenous peoples in Article 19:

"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" (*United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295, UN Doc A/61/L.67 (2007). At [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (viewed 1 December 2008). The Aboriginal and Torres Strait Islander Social Justice Commissioner has also commented on a central element of a human rights based approach being Indigenous peoples participation and engagement in government laws, policies and programs (Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2006), p 5–6.) See also Human Rights and Equal Opportunity Commission and United Nations Permanent Forum on Indigenous Issues, *Guidelines for Engagement with indigenous peoples*, United Nations Conference on Engaging Communities (2005). At [http://www.hreoc.gov.au/social\\_justice/conference/engaging\\_communities/index.html](http://www.hreoc.gov.au/social_justice/conference/engaging_communities/index.html) (viewed 1 December 2008).

## Part 6: Conclusion and recommendations

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There is no doubt about the need for healing in Indigenous communities. You only need to listen to the stories of members of the Stolen Generations; the stories of Indigenous women escaping family violence; the stories of Indigenous peoples in custody who know about the thin line between victim and perpetrator; and the Indigenous children that carry all of these stories around, to know that we need healing urgently.

This need is not new, but I have argued in this chapter that I do think we have a rare confluence of events at the moment. The National Apology has stirred real compassion and understanding amongst Australians. Many are looking for ways that they can try and ‘make good’ for the past, but in a way that is also about achieving a better future. Healing holds that promise and I think it is something people will get behind if we put it firmly on the national agenda.

This chapter has reviewed some of the literature to get to an understanding of healing in the Indigenous context, looked at real life Australian examples, presented lessons and strategies from the Canadian experience and reported on our consultation process. This ground work can guide and inform what the agenda we need to set for Indigenous healing.

However, I urge that action not be at the expense of proper consultation. This is too important an issue to rush in and develop healing policy without real community engagement. Experience tells us that this could be a once in a life opportunity so let’s do it in a way that respects human rights and will ultimately lead to better policy and outcomes.

For this reason I make the following recommendation to the Australian Government.

### **Recommendation 15**

That the federal government establish an independent, Indigenous controlled national indigenous healing body following extensive consultation, which is responsible for developing and then implementing a coordinated National Indigenous Healing Framework. The Framework should be developed in conjunction with the federal and state/ territory governments and Indigenous organisations and communities.

The national Indigenous healing body should:

- be based on the key principles of self-determination, respect for human rights, reconciliation, and adopt a community development approach that is grounded in Indigenous culture and identity;
- have adequate resourcing for long term community generated, and culturally appropriate Indigenous healing services and programs, commensurate with need;

- have a broad range of possible roles and functions including: research, public education, capacity building, training, accreditation, policy review, public reporting and monitoring and evaluation;
- engage with state and territory governments to develop a nationally consistent approach in the provision of financial redress (compensation) for the Stolen Generations.

The national Indigenous healing body should also be funded to conduct educational activities about Indigenous healing to Indigenous communities, service providers and relevant government departments to ensure that the purpose of a national Indigenous healing body is clearly understood.

# Chapter 5

## Progress towards achieving Aboriginal and Torres Strait Islander health equality within a generation – an update on efforts to ‘Close the Gap’

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### Part 1: Introduction

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*Accordingly we commit:*

To developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve health equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030.

– Close the Gap Statement of Intent, March 2008<sup>1</sup>

This chapter looks at progress made in addressing Indigenous health inequality since 2005. In the *Social Justice Report 2005*, I called for a national effort to close the gap in health inequality within a generation. Since 2006, I have led a substantial national campaign to garner public support for this goal and to articulate what is required to achieve it. The Close the Gap Campaign has been unprecedented in how it has brought together the health sector with NGOs and the Australian community to champion change. The new Australian Government has responded positively to this Campaign and adopted a number of its recommendations.

*Close the Gap* has become part of the lexicon. It is widely used to describe the policy aspirations of Australian governments across a range of areas of socio-economic disadvantage. But this was not always the case. The previous government did not accept the recommendations of the *Social Justice Report 2005* and was unwilling to commit to a targeted approach to overcome Indigenous health inequality. It has taken sustained public lobbying from the Close the Gap Campaign partners and the Australian public to make this issue the national priority it should always have been.

We have now made a substantial breakthrough on this most pressing human tragedy. That breakthrough is to convince policy makers, politicians and the

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<sup>1</sup> *Close the Gap Statement of Intent* (signed at the Indigenous Health Equality Summit, Canberra, 20 March 2008). At [www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 28 January 2009).

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general public that the goal of health equality for all Australians within a generation is realistic and achievable if we act together in partnership, and in a targeted and determined manner. This chapter highlights the many positive developments that have occurred since 2005, but also looks at areas of work that remain.

Overall, I am cautiously optimistic that Indigenous Australians born in the year 2030 will look forward to the same long and healthy lives as their non-Indigenous counterparts so long as we continue to build on the substantial gains made since 2005.

## Part 2: A reform agenda to achieve health equality for Indigenous peoples within a generation

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### 1. The *Social Justice Report 2005*

The *Social Justice Report 2005* examined the longstanding challenge of Indigenous health inequality in Australia.<sup>2</sup> While noting there have been some improvements since the 1970s, the report found that overall progress has been slow and inconsistent. The inequality gap between Aboriginal and Torres Strait Islander peoples and other Australians remained wide and had not been significantly reduced.

Underlying the awful statistics, the report highlighted that Aboriginal and Torres Strait Islander peoples do not have an *equal opportunity* to be as healthy as non-Indigenous Australians. Indigenous people, in twenty first century Australia, do not enjoy *equal access* to primary health care or to health infrastructure (which includes safe drinking water, effective sewerage systems, rubbish collection services and healthy housing).

The report noted that Australian governments had made commitments to address Indigenous health inequality but always without a specified time frame and accordingly, without any deadlines or sense of urgency. Over time, there have been a number of well intentioned strategies and frameworks in Australia, but they have not resulted in improvements to the health of Indigenous Australians. We need to accept that the approach of the past – which has resulted in incremental funding increases – have not been enough to match Indigenous health needs. In the report, I urged that this situation not be allowed to continue in a nation as prosperous as ours.

The *Social Justice Report 2005* identified a need for fundamental change to our approach if things were to improve, and Indigenous Australians to stand as equals, in terms of health and life expectation, with other Australians.

The report proposed a human rights based approach to address the health inequality of Indigenous Australians based on their right to health. It urged governments to commit to addressing the health status of Aboriginal and Torres Strait Islander peoples within a set timeframe.

The recommendations of the *Social Justice Report 2005* are set out below.

#### **Text Box 1: Recommendations of the *Social Justice Report 2005***

##### **Recommendation 1: A commitment to achieve Aboriginal and Torres Strait Islander health equality**

That the governments of Australia commit to achieving equality of health status and life expectation between Aboriginal and Torres Strait Islander and non-Indigenous people within 25 years.

2 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2006) ch 2.

**Recommendation 2:**

**Supporting commitments and processes to achieve equality of health status**

- a. That the governments of Australia commit to achieving equality of access to primary health care and health infrastructure within 10 years for Aboriginal and Torres Strait Islander peoples.
- b. That benchmarks and targets for achieving equality of health status and life expectation be negotiated, with the full participation of Aboriginal and Torres Strait Islander peoples, and committed to by all Australian governments. Such benchmarks and targets should be based on the indicators set out in the *Overcoming Indigenous Disadvantage Framework* and the *Aboriginal and Torres Strait Islander Health Performance Framework*. They should be made at the national, state/ territory and regional levels and account for regional variations in health status. Data collection processes should also be improved to enable adequate reporting on a disaggregated basis, in accordance with the *Aboriginal and Torres Strait Islander Health Performance Framework*.
- c. That resources available for Aboriginal and Torres Strait Islander health, through mainstream and Indigenous specific services, be increased to levels that match need in communities and to the level necessary to achieve the benchmarks, targets and goals set out above. Arrangements to pool funding should be made with states and territories matching additional funding contributions from the federal government.
- d. The goal and aims of the *National Strategic Framework for Aboriginal and Torres Strait Islander Health* be incorporated into the operation of Indigenous Coordination Centres and the new arrangements for Indigenous affairs. This includes through reliance on the outcomes of regional planning processes under the Aboriginal Health Forums.

**Recommendation 3:**

**Bipartisan support for a generational commitment to close the gap**

That the Australian Health Minister's Conference agree a *National Commitment to achieve Aboriginal and Torres Strait Islander Health Equality* and that bi-partisan support for this commitment be sought in federal Parliament and in all state and territory parliaments.

This commitment should:

- acknowledge the existing inequality of health status enjoyed by Aboriginal and Torres Strait Islander peoples;
- acknowledge that this constitutes a threat to the survival of Aboriginal and Torres Strait Islander peoples, their languages and cultures, and does not provide Aboriginal and Torres Strait Islander peoples with the ability to live safe, healthy lives in full human dignity;
- confirm the commitment of all governments to the *National Strategic Framework* and the *National Aboriginal Health Strategy* as providing over-arching guidance for addressing Aboriginal and Torres Strait Islander health inequality;
- commit all governments to a program of action to redress this inequality, which aims to ensure equality of opportunity in the provision of primary health care services and health infrastructure within ten years;
- note that such a commitment requires partnerships and shared responsibility between all levels of government, Aboriginal and Torres Strait Islander peoples and communities, non-government organisations and the private sector;
- acknowledge that additional, special measures will be necessary into the medium term to achieve this commitment;

- acknowledge that significant advances have been made, particularly in levels of resourcing, since 1995 to address this situation;
- commit to celebrate and support the success of Aboriginal and Torres Strait Islander peoples in addressing health inequality;
- accept the holistic definition of Aboriginal and Torres Strait Islander health and the importance of Aboriginal community controlled health services in achieving lasting improvements in Aboriginal and Torres Strait Islander health status;
- commit to engage the full participation of Aboriginal and Torres Strait Islander peoples in all aspects of addressing their health needs;
- commit to continue to work to achieve improved access to mainstream services, alongside continued support for community controlled health services in urban as well as rural and remote areas; and
- acknowledge that achieving such equality will contribute to the reconciliation process.

## 2. The Close the Gap Campaign

Following the release of the *Social Justice Report 2005* in March 2006, under my leadership, the National Aboriginal Community Controlled Health Organisation (NACCHO), the Australian Indigenous Doctors' Association (AIDA), the Congress of Aboriginal and Torres Strait Islander Nurses (CATSIN), Oxfam Australia, Australians for Native Title and Reconciliation (ANTaR), the Fred Hollows Foundation (and later joined by the Indigenous Dentists' Association of Australia (IDAA) and Australian Indigenous Psychologists' Association (AIPA)) founded the National Indigenous Health Equality Campaign.

To that end we formed a Steering Committee to guide the Campaign. The Steering Committee also comprises representatives from the following organisations:

- Australian General Practice Network;
- Australian Medical Association;
- Cooperative Research Centre for Aboriginal Health;
- Heart Foundation;
- Menzies School of Health Research;
- Royal Australian College of General Practitioners;
- Royal Australasian College of Physicians; and
- Torres Strait and Northern Peninsula District Health Service.<sup>3</sup>

<sup>3</sup> A further non-exhaustive list of organisations who have publicly expressed support for the campaign includes: Aboriginal Medical Services Alliance Northern Territory; Amnesty International Australia; Australian Catholic Bishops' Social Justice Committee; Australian College of Rural and Remote Medicine; Australian Council of Social Services; Australian Council for International Development; Australian Institute of Health and Welfare; Australian Institute of Aboriginal and Torres Strait Islander Studies; Australian Nursing Federation; Australian Red Cross; Caritas Australia; Clinical Nurse Consultants Association of NSW; Diplomacy Training Program, University of New South Wales; Gnibi the College of Indigenous Australian Peoples, Southern Cross University; Human Rights Law Resource Centre; Ian Thorpe's Fountain for Youth; Indigenous Law Centre, University of New South Wales; Jumbunna, University of Technology Sydney; Make Indigenous Poverty History campaign; National Aboriginal and Torres Strait Islander Ecumenical Council; National Association of Community Legal Centres; National Children's and Youth Law Centre; National Rural Health Alliance; Public Health Association of Australia; Quaker Services Australia; Rural Doctors Association of Australia; Save the Children Australia; Sax Institute; Sisters of Mercy Aboriginal Network NSW; Sisters of Mercy Justice Network Asia Pacific; UNICEF Australia; and the Victorian Aboriginal Community Controlled Health Organisation.

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Professor Ian Ring, Professorial Fellow, Faculty of Commerce, Centre for Health Services Development, University of Wollongong, and Daniel Tarantola, Professor of Health and Human Rights at the University of New South Wales, provide expert assistance to the Steering Committee.<sup>4</sup>

Collectively, these bodies and individuals are referred to in this chapter as the Close the Gap Steering Committee for Indigenous Health Equality, or the Steering Committee.

The founding of the Steering Committee is in itself an historic event, being the first time that such authoritative and influential peak bodies and key organisations from Australian civil society have worked together in partnership in such a sustained manner. Indigenous leadership, and the leadership of the Indigenous health peak bodies in particular, has also been a hallmark of the Close the Gap Campaign.

Many member organisations were required by their constitutions to formally seek the support of their members in order to participate in the Campaign. NACCHO, for example, successfully received the endorsement of its approximately 140 member Aboriginal community controlled health services to actively participate in the Campaign. For AIDA, the endorsement of their Board was required. Through these Steering Committee members' internal processes, the Campaign ensured it had significant support among both Indigenous health professionals (specifically, doctors, nurses, dentists and, later, psychologists) and the Aboriginal community controlled health services. The latter was particularly important as it was a strong indicator of broader Indigenous community support for the Campaign (given these health services draw their members from the communities they serve) and otherwise ensured that these services would play a significant role in the Campaign.

Our first year's work involved consolidating our relationship with each other. It took time to understand what each could bring to the table in terms of resources, contacts, expert assistance, and particular skills.

There was also a need to articulate exactly what we were seeking. While agreement with the recommendations of the *Social Justice Report 2005* provided a basis for coming together, it was still necessary to flesh out important areas of our collective approach, many of which are discussed in this chapter.

Dedicating valuable resources to the Campaign was also crucial. With the exception of matching funding from the Australian Government to fund the National Indigenous Health Equality Summit in 2008 (discussed below) the Campaign has been entirely self-funded by the Steering Committee members and supporting organisations to date. This has been of vital importance in demonstrating the commitment that each partner has brought to the process, and also in ensuring a sustained campaign to convince Australian governments of the need to act.

In terms of our activities, our first year was characterised by letter writing, meetings with Ministers of the then Coalition Government, other members of Parliament, and key civil servants as we attempted to raise consciousness among decision makers as to our existence and what we were asking for. From the start, we were conscious of the need to engage fully with both Government and Opposition members of Parliament as it was clear that the commitments we were seeking would require bi-partisan support over the lifetime of many parliaments.

We also began the development of what would become the *Close the Gap National Indigenous Health Equality Targets* to further one of the *Social Justice Report 2005* recommendations – that Australian governments utilise targets and benchmarks to not

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4 From the initial drafting of the *Social Justice Report 2005* and inception of the Close the Gap campaign, Christopher Holland and Darren Dick of the Australian Human Rights Commission have acted as the Secretariat for the Close the Gap process, with the Social Justice Commissioner chairing and leading the committee process.

only provide an end in sight to the Indigenous health equality gap, but also to ensure accountability for achieving the goal of health equality.

The targets were developed over a period of six months by three working groups of the Steering Committee. Each was led by a notable Indigenous person with extensive health experience:

- Dr Mick Adams, Chair, National Aboriginal Community Controlled Health Organisation;
- Associate Professor Dr Noel Hayman, Indigenous Health Committee of the Royal Australasian College of Physicians; and
- Dr Ngiare Brown, then at the Menzies School of Health Research.

The targets working groups drew on the expertise of a wide range of health experts, and, in particular, Indigenous health experts.<sup>5</sup>

Steering Committee members also began to raise public consciousness through advocacy work, and by the end of the first year we were ready to launch a public campaign.

'Close the Gap' was the catch cry chosen for this, and a media and public relations campaign was organised with great impact by the National Aboriginal Community Controlled Health Organisation, Australians for Native Title and Reconciliation and Oxfam Australia. Within a few months, the 'Close the Gap' logo was a common sight, across T-shirts, on websites and billboards.

Given our limited resources, with the financial support of Oxfam Australia we particularly targeted billboards at Canberra airport knowing that they were likely to be seen by the politicians we were seeking to influence. Petitions were also organised that gathered tens of thousands of signatures from members of the public.

On 4 April 2007, the Close the Gap Campaign was formally launched at the Telstra Stadium, Sydney, by Olympians Catherine Freeman and Ian Thorpe, alongside Henry Councillor (then Chair of the National Aboriginal Community Controlled Health Organisation), journalist Jeff McMullen, and myself.

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5 The following individuals assisted with the creation of the targets: Dr Christopher Bourke, Indigenous Dentists' Association of Australia; Ms Vicki Bradford, Congress of Aboriginal and Torres Strait Islander Nurses; Mr Tom Brideson, Charles Sturt University's Djirruwang Aboriginal and Torres Strait Islander mental health program; Dr David Brockman, National Centre in HIV Epidemiology and Clinical Research; Dr Alex Brown, Baker IDI Heart and Diabetes Institute; Professor Jonathon Carapetis, Menzies School of Health Research; Dr Alan Cass, The George Institute for International Health; Professor Anne Chang, The Queensland Centre for Evidence Based Nursing and Midwifery; Dr Margaret Chirgwin, National Aboriginal Community Controlled Health Organisation; Dr John Condon, Menzies School of Health Research; Mr Henry Councillor, former National Aboriginal Community Controlled Health Organisation; Dr Sophie Couzos, National Aboriginal Community Controlled Health Organisation; Professor Sandra Eades, Sax Institute; Ms Dea Delaney Thiele, National Aboriginal Community Controlled Health Organisation; Mr Mick Gooda, Cooperative Research Centre for Aboriginal Health; Dr Sally Goold OAM, Chair, Congress of Aboriginal and Torres Strait Islander Nurses; Ms Mary Guthrie, Australian Indigenous Doctors' Association; Associate Professor Colleen Hayward, Kulunga Research Network and Curtin University; Ms Dawn Ivinson, Royal Australasian College of Physicians; Dr Kelvin Kong, Australian Indigenous Doctors' Association; Dr Marlene Kong, Australian Indigenous Doctors Association; Mr Traven Lea, Heart Foundation; Dr Tamara Mackean, Australian Indigenous Doctors' Association; Dr Naomi Mayers, National Aboriginal Community Controlled Organisation; Mr Romlie Mokak, Australian Indigenous Doctors' Association; Professor Helen Milroy, Associate Professor and Director for the Centre for Aboriginal Medical and Dental Health; Professor Kerin O'Dea, Menzies School of Health Research; Dr Katherine O'Donoghue, Indigenous Dentists' Association of Australia; Ms Mary Osborn, Royal Australasian College of Physicians; Professor Paul Pholeros AM, University of Sydney; Professor Ian Ring, Professorial Fellow, Faculty of Commerce, Centre for Health Services Development, University of Wollongong; Professor Fiona Stanley AC, Telethon Institute for Child Health Research; Professor Paul Torzillo AM, Department of Respiratory Medicine, Royal Prince Alfred Hospital; Dr James Ward, Collaborative Centre for Aboriginal Health Promotion; Ms Beth Warner, Royal Australasian College of Physicians; Associate Professor Ted Wilkes, National Indigenous Drug and Alcohol Committee of the Australian National Council on Drugs; and Dr Mark Wentong, Australian Indigenous Doctors' Association.

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The launch was also marked by the publication of a full-page open letter in *The Australian* calling on all Australian governments to support the Campaign.<sup>6</sup> This and other activities had real impact: notably, the ALP in Opposition – and now in Government – had adopted much of the language and the approach of the Close the Gap Campaign in its Indigenous affairs policy by the time of the 2007 federal election.

Once in government, the Close the Gap platform became Australian Government policy. In particular, and as discussed in greater detail below, a significant milestone for the Campaign was on 20 December 2007 when the Council of Australian Governments (COAG) agreed to a partnership between all levels of government to work with Indigenous communities to achieve the target of ‘closing the gap’ on Indigenous disadvantage, and agreeing to close the 17-year gap in life expectancy between Indigenous and non-Indigenous Australians within a generation.<sup>7</sup>

The rights based approach to Indigenous health inequality set out in the *Social Justice Report 2005* and the Campaign as it gathered pace also attracted significant international attention. In particular, Professor Paul Hunt, the United Nations Human Rights Council’s Special Rapporteur on the right to the highest attainable standard of health described the approach and the Campaign as world best practice.

Further, the Campaign was the subject of a case study in Dr Helen Potts’ (Human Rights Centre, University of Essex) landmark publication, *Accountability and the Right to the Highest Attainable Standard of Health*;<sup>8</sup> and also referred to in the World Health Organisation’s Commission on the Social Determinants of Health’s final report, *Closing the gap in a generation: Health equity through action on the social determinants of health*, a title that echoed the name of the Campaign.<sup>9</sup>

### 3. The National Indigenous Health Equality Summit

The Close the Gap Steering Committee for Indigenous Health Equality hosted the National Indigenous Health Equality Summit in Canberra from 18 – 20 March 2008.

The Summit was intended both as the culmination of the previous two years work by the Steering Committee and supporting organisations, and also aimed to build on the momentum for change provided by the commitments of Australian Governments made at the 20 December 2007 COAG meeting (as discussed above).

The first two days (18 – 19 March) involved approximately 100 invited delegates including senior representatives from Commonwealth and state/ territory level governments and health departments; specialists and experts (and particularly Indigenous ones) from a range of health and health-related areas; and representatives from Indigenous health and health related peak bodies (including from all the state and territory level Aboriginal community controlled health organisation peak bodies).

Over those two days, the overall approach of the Campaign and the draft National Indigenous Health Equality Targets were presented to the delegates, with discussion and debate around these being encouraged and fed back into the target development process.

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6 Close the Gap Campaign, Open letter to governments, *The Australian*, December 2006. At [http://www.humanrights.gov.au/social\\_justice/health/health\\_OpenLetter.html](http://www.humanrights.gov.au/social_justice/health/health_OpenLetter.html) (viewed 28 January 2009).

7 Council of Australian Governments, *Communique – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm) (viewed 28 January 2009).

8 H Potts, *Accountability and the Right to the Highest Attainable Standard of Health* (2008) p 19. At: [http://www2.essex.ac.uk/human\\_rights\\_centre/rth/docs/HRC\\_Accountability\\_Mar08.pdf](http://www2.essex.ac.uk/human_rights_centre/rth/docs/HRC_Accountability_Mar08.pdf) (viewed 28 January 2009).

9 Commission on the Social Determinants of Health, *Closing the gap in a generation: health equity through action on the social determinants of health* (2008). At [http://whqlibdoc.who.int/publications/2008/9789241563703\\_eng.pdf](http://whqlibdoc.who.int/publications/2008/9789241563703_eng.pdf) (viewed 28 January 2009).

The final morning of the Summit (20 March) was a ceremonial occasion held at the Great Hall of Parliament House, Canberra. Here, before members of the public, the press, Members of Parliament, public servants and Summit delegates, the Summit outcomes were presented.

There were three major outcomes from the Summit:

### 3.1 National Indigenous Health Equality Targets

The following considerations framed the thinking of the Steering Committee and the assisting experts when developing targets:

- What targets (if achieved) will reduce disparity to the greatest degree?
- What targets (if achieved) will improve health outcomes to the greatest degree? What is the disease-specific burden experienced by Indigenous populations?
- Can we adequately measure the current/ future indicators to determine whether or not the target has been reached, or is significant additional investment, infrastructure or capacity required?
- To what targets can we hold government to account as their primary responsibility?

After the Summit, the targets were finalised by the expert members of the targets working groups and published in July 2008.<sup>10</sup> They identify the following five key subject areas for target setting as priorities, and the key elements of any national plan to achieve Indigenous health equality:

- Partnership;
- Health status;
- Primary health care and other health services;
- Infrastructure; and
- Social and cultural determinants (still under development).

These targets represent the 'industry perspective' on what needs to be done and the time frame for doing so in relation to achieving Indigenous health. This unprecedented body of work is intended to be the basis of negotiations with Australian governments as to the main elements and time frames of a national plan to achieve Indigenous health equality by 2030. The targets are discussed in greater detail in part 2 below.

### 3.2 The Statement of Intent

On 20 March 2008, as the highlight of the Summit ceremony at the Great Hall in Parliament House, Canberra, the signing of the *Close the Gap Indigenous Health Equality Summit Statement of Intent* (Statement of Intent) took place.

The main signatories to this were the:

- Prime Minister;
- Leader of the Opposition;
- Minister for Health and Ageing;
- Minister for Families, Housing, Community Services and Indigenous Affairs;
- Presidents and Chairs of the four main Indigenous health peak bodies:
  - the National Aboriginal Community Controlled Health Organisation,
  - the Australian Indigenous Doctors' Association,

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<sup>10</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008). At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

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- the Congress of Aboriginal and Torres Strait Islander Nurses, and
- the Indigenous Dentists' Association of Australia;
- Presidents and CEOs of the four main mainstream health peak bodies;
  - the Australian Medical Association,
  - the Royal Australian College of General Practitioners,
  - the Royal College of Australasian Physicians; and
  - the Australian General Practice Network;
- Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission (then the Human Rights and Equal Opportunity Commission).<sup>11</sup>

The Statement of Intent is one of the most significant compacts between Australian governments and civil society in Australian history. It should be seen as a foundation document for a national effort to achieve Indigenous health equality by 2030, setting out key principles that should underpin national efforts to that end.

Since the National Indigenous Health Equality Summit, the Statement of Intent has received bi-partisan support from the Parliaments of Victoria and Queensland. Efforts are underway for every Australian government to have signed the Statement of Intent by 20 March 2009.

The Statement of Intent is reproduced in full below.

### Text Box 2: Close the Gap Statement of Intent<sup>12</sup>

#### Preamble

*Our challenge for the future is to embrace a new partnership between Indigenous and non-Indigenous Australians. The core of this partnership for the future is closing the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities. This new partnership on closing the gap will set concrete targets for the future: within a decade to halve the widening gap in literacy, numeracy and employment outcomes and opportunities for Indigenous children, within a decade to halve the appalling gap in infant mortality rates between Indigenous and non-Indigenous children and, within a generation, to close the equally appalling 17-year life gap between Indigenous and non-Indigenous when it comes to overall life expectancy.*

– Prime Minister Kevin Rudd, Apology to Australia's Indigenous Peoples, 13 February 2008

This is a statement of intent – between the Government of Australia and the Aboriginal and Torres Strait Islander Peoples of Australia, supported by non-Indigenous Australians and Aboriginal and Torres Strait Islander and non-Indigenous health organizations – to work together to achieve equality in health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by the year 2030.

11 Other signatories included the heads of NGOs including Oxfam Australia, Australians for Native Title and Reconciliation, Reconciliation Australia, Get Up!, Catherine Freeman Foundation, Ian Thorpe's Fountain for Youth, and the Australian Doctors Trained Overseas Association. See also, *Close the Gap Statement of Intent* (signed at the Indigenous Health Equality Summit, Canberra, 20 March 2008). At [www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 28 January 2009).

12 *Close the Gap Statement of Intent* (signed at the Indigenous Health Equality Summit, Canberra, 20 March 2008). At [www.humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://www.humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 28 January 2009).

We share a determination to close the fundamental divide between the health outcomes and life expectancy of the Aboriginal and Torres Strait Islander peoples of Australia and non-Indigenous Australians.

We are committed to ensuring that Aboriginal and Torres Strait Islander peoples have equal life chances to all other Australians.

We are committed to working towards ensuring Aboriginal and Torres Strait Islander peoples have access to health services that are equal in standard to those enjoyed by other Australians, and enjoy living conditions that support their social, emotional and cultural well-being.

We recognise that specific measures are needed to improve Aboriginal and Torres Strait Islander peoples' access to health services. Crucial to ensuring equal access to health services is ensuring that Aboriginal and Torres Strait Islander peoples are actively involved in the design, delivery, and control of these services.

**Accordingly we commit:**

- To developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030.
- To ensuring primary health care services and health infrastructure for Aboriginal and Torres Strait Islander peoples which are capable of bridging the gap in health standards by 2018.
- To ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.
- To working collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples.
- To building on the evidence base and supporting what works in Aboriginal and Torres Strait Islander health, and relevant international experience.
- To supporting and developing Aboriginal and Torres Strait Islander community-controlled health services in urban, rural and remote areas in order to achieve lasting improvements in Aboriginal and Torres Strait Islander health and wellbeing.
- To achieving improved access to, and outcomes from, mainstream services for Aboriginal and Torres Strait Islander peoples.
- To respect and promote the rights of Aboriginal and Torres Strait Islander peoples, including by ensuring that health services are available, appropriate, accessible, affordable, and of good quality.
- To measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

## 4. National Indigenous Health Equality Council

At the National Indigenous Health Equality Summit, the government announced the creation of the National Indigenous Health Equality Council (NIHEC) to progress its close the gap commitments.

The NIHEC is intended to 'provide national leadership in responding to Government's commitment to closing the gap on Indigenous disadvantage by providing advice to

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Government on working towards the provision of equitable and sustainable health outcomes for Indigenous Australians.<sup>13</sup>

Its terms of reference require it to:

- advise on commitments made under the March 2008 Statement of Intent on achieving Indigenous health equality;
- advise on the development and monitoring of health related goals and targets to support the Government's commitments on life expectancy and child mortality; and
- develop advice to the Minister on:
  - strategic priorities for Aboriginal and Torres Strait Islander Health;
  - meeting targets agreed by the Australian Government and the Council of Australian Governments; and
  - monitoring of progress towards 'closing the gap' of Indigenous disadvantage including through the annual report to Parliament, the Aboriginal and Torres Strait Islander Health Performance Reports and Overcoming Indigenous Disadvantage Reports; and
  - any specific matters referred to it by the Government and the AHMAC.
- as a first priority, consider workforce development issues and make recommendations to the Minister in respect of workforce development and sustainability, including providing advice on pathways to increase Indigenous workforce representation.<sup>14</sup>

The Steering Committee for Indigenous Health Equality has worked to establish a strong working relationship with the NIHEC since it first met in August 2008. The Steering Committee will continue to work with the NIHEC in 2009 to enable both to further their many common goals.

## 5. Commitments to a new partnership with Indigenous peoples

The Prime Minister has made closing the gap a defining feature of his approach to Indigenous affairs. In the *National Apology to Australia's Indigenous Peoples* on 13 February 2008 he also stated the need for a new partnership between Indigenous and non-Indigenous Australians:

The core of this partnership for the future is closing the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities. This new partnership on closing the gap will set concrete targets for the future: within a decade to halve the widening gap in literacy, numeracy and employment outcomes and opportunities for Indigenous children, within a decade to halve the appalling gap in infant mortality rates between Indigenous and non-Indigenous children and, within a generation, to close the equally appalling 17-year life gap between Indigenous and non-Indigenous when it comes to overall life expectancy.<sup>15</sup>

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13 Department of Health and Ageing, *National Indigenous Health Equality Council Terms of Reference* (2008). At <http://www.nihec.gov.au/internet/nihec/publishing.nsf/Content/terms> (viewed 28 January 2009).

14 Department of Health and Ageing, *National Indigenous Health Equality Council Terms of Reference* (2008). At <http://www.nihec.gov.au/internet/nihec/publishing.nsf/Content/terms> (viewed 28 January 2009).

15 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

And he promised change in the way Australian governments would work with Indigenous Australians in the future:

The truth is: a business as usual approach towards Indigenous Australians is not working. Most old approaches are not working. We need a new beginning. A new beginning which contains real measures of policy success or policy failure.<sup>16</sup>

He also flagged the importance of Australian Government leadership and national planning in this effort, stating that 'unless we as a parliament set a destination for the nation, we have no clear point to guide our policy, our programs or our purpose; no centralised organising principle.'<sup>17</sup>

The Prime Minister also stated that he would make an annual report to Parliament on its first working day on national efforts to close the gap, stating that:

Closing the life expectancy gap between Indigenous and non-Indigenous Australians is a core priority of the Government I lead... [e]ach year we must know as a Government, as a people, and as a country if we had made progress closing this gap... [e]very leader knows that accountability brings with it the risk of criticism of failure, as the Prime Minister of Australia I accept that risk.<sup>18</sup>

The National Apology also contained a commitment to bipartisanship, to:

[create] a kind of war cabinet on parts of Indigenous policy, because the challenges are too great and the consequences too great to just allow it all to become a political football, as it has been so often in the past.<sup>19</sup>

This was to be tested by the creation of a 'joint policy commission to develop a housing strategy for remote communities over the next five years'.<sup>20</sup>

On 27 June 2008, with the promise of the bipartisan 'war cabinet' unfulfilled, a National Policy Commission on Indigenous Housing nonetheless met for the first time in Canberra to 'provide advice to the Government on innovative proposals to improve the provision of housing in remote Indigenous communities.'<sup>21</sup>

Initial tasks include assessing remote Indigenous housing data to identify gaps, assessing the capacity of existing government programs to address remote Indigenous housing needs, and identifying tangible policy objectives for government in both remote and urban and regional contexts.<sup>22</sup>

## 6. The national reform agenda

The activities of the Close the Gap Steering Committee for Indigenous Health Equality took place against an unfolding background of multiple (and often overlapping) processes to reform the Australian health system and inter-governmental relationships. These have enormous potential to contribute to the achievement of Indigenous health equality by 2030.

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16 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

17 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

18 Prime Minister, 'Annual Prime Ministerial Statement on Closing the Gap' (Media Release, 5 April 2008). At [http://www.pm.gov.au/media/Release/2008/media\\_release\\_0166.cfm](http://www.pm.gov.au/media/Release/2008/media_release_0166.cfm) (viewed 29 January 2009).

19 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

20 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

21 Prime Minister, 'Indigenous housing meeting' (Media Release, 27 June 2008). At <http://www.alp.org.au/media/0608/msfcspm270.php> (viewed 29 January 2009).

22 Prime Minister, 'Indigenous housing meeting' (Media Release, 27 June 2008). At <http://www.alp.org.au/media/0608/msfcspm270.php> (viewed 29 January 2009).

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As already noted, at the 20 December 2007 COAG meeting, all Australian governments agreed to 'a partnership between all levels of government to work with Indigenous communities to achieve the target of closing the gap on Indigenous disadvantage'.<sup>23</sup>

This included agreement that:

- the 17 year gap in life expectancy between Indigenous and non-Indigenous Australians must be closed within a generation; and
- the infant mortality gap for Indigenous children under five halved within a decade.<sup>24</sup>

At this and over subsequent meetings, COAG adopted four more Indigenous equality targets:

- to halve the gap in literacy and numeracy achievement between Aboriginal and Torres Strait Islander students and other students within a decade;
- to halve the gap in employment outcomes for Aboriginal and Torres Strait Islander people within a decade;
- to at least halve the gap in attainment at Year 12 schooling (or equivalent level) by 2020; and
- to provide all Aboriginal and Torres Strait Islander four year olds in remote communities with access to a quality pre-school program within five years.

The context of these commitments was a National Reform Agenda, agreed to by Australian Governments in part to enable the new Australian Government's election platform to be implemented. In the Communiqué from the 20 December meeting, COAG noted a 'unique opportunity for Commonwealth-State cooperation' and that on this foundation they could fundamentally change the way the states, territories and federal government interacted in the delivery of services across a range of areas.<sup>25</sup>

COAG identified seven areas for its 2008 work agenda:

- Health and Ageing
- Productivity Agenda – including education, skills, training and early childhood
- Climate Change and Water
- Infrastructure
- Business Regulation and Competition
- Housing
- Indigenous Reform

To progress this agenda, seven working groups were established to progress reform across these seven areas. The work of each is overseen by a Commonwealth Minister.<sup>26</sup>

The Working Group on Indigenous Reform was established to provide COAG an integrated strategy regarding closing the gap focusing on the six nationally agreed targets discussed previously in the text.<sup>27</sup> The Steering Committee has worked

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23 Council of Australian Governments, *Communiqué – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm) (viewed 28 January 2009).

24 Council of Australian Governments, *Communiqué – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm) (viewed 28 January 2009).

25 Council of Australian Governments, *Communiqué – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm) (viewed 28 January 2009).

26 Council of Australian Governments, *Communiqué – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm) (viewed 28 January 2009).

27 Council of Australian Governments, *Communiqué – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm) (viewed 28 January 2009).

intermittently with members of this working group, through a Building the Evidence Base sub group of the working group, in 2008.

Opportunities to work with this working group will increase in 2009, and it is hoped by the Steering Committee that such fundamentally important planning processes are opened to the input and scrutiny of Indigenous peoples and their representatives – not the least of which the Steering Committee, in relation to health planning.

## 7. New national framework for federal financial relations

At the meeting of COAG on 26 March 2008, a new National Framework for Federal Financial Relations underpinning the National Reform Agenda was clarified. The framework has an enormous potential to facilitate the achievement of Indigenous health equality by linking Commonwealth funding to the states and territories to specific performance indicators to further reform agendas, including that of Indigenous health equality.

As set out below, this framework is twofold: covering National Specific Purpose Payments, which will be the main means through which the Commonwealth delivers funding to the states and territories to meet their service delivery obligations; and National Partnerships, which are agreements around specific reforms or projects.

### **Text Box 3: New National Framework for Federal Financial Relations<sup>28</sup>**

The financial new framework will take the form of an Intergovernmental Agreement on Commonwealth-State financial arrangements to commence on 1 January 2009.

Five or six new National Specific Purpose Payments are being developed to replace the current 90 or so Specific Purpose Payments. The new National Specific Purpose Payments will clarify the roles and responsibilities of different levels of government, reduce duplication and waste, and, importantly, reduce Commonwealth prescriptions on service delivery. Blurred roles and responsibilities between differing levels of government, as well as duplication and overlap, are costly aspects of Australia's federal system, particularly where they undermine accountability.

The new federal financial framework includes a further clarification of responsibilities to ensure the community knows which level of government is accountable for the delivery of a particular service. By moving away from input controls to focus on agreed objectives, outcomes and outputs, the new framework will provide the states and territories with greater flexibility to allocate resources to areas where they will produce the best outcomes for the community.

With agreed objectives and outcomes, and the COAG Reform Council's reporting, the new system seeks to establish improved accountability from the states and territories.

#### *National Partnerships*

In addition to the National Specific Purpose Payments, the new financial framework will include new National Partnership arrangements. These National Partnerships will provide funding in areas of joint responsibility for specific projects or to facilitate reforms, and reward states and territories that deliver on reform.

28 Council of Australian Governments, *COAG Reform Council News, 2/2008* (2008). At [http://www.coag.gov.au/about\\_coag/crc/docs/CRCnews022008.pdf](http://www.coag.gov.au/about_coag/crc/docs/CRCnews022008.pdf) (viewed 29 January 2009).

These National Partnerships, especially the reform facilitation and reward payments, will provide a framework through which the Commonwealth and a state or territory can agree on important reforms and pursue them, separately from the main cooperative funding framework for service delivery – delivered through Specific Purpose Payments.

Some of the kinds of reforms that may be driven through National Partnerships arrangements include: reform to address Indigenous disadvantage under the heading of ‘closing the gap’.

The COAG Reform Council will independently assess whether states and territories have achieved the predetermined milestones and performance benchmarks in National Partnerships before incentive payments to reward reforms are made. Final decisions on the making of incentive payments will remain with the Australian Government.

## 8. Social inclusion agenda

Another promising development is the Australian Government’s commitment to a social inclusion agenda, which has its origins in the Australian Labor Party’s November 2007 election platform. It seeks, in part, to ensure that the continuous economic growth of the past almost two decades in Australia is enjoyed by all Australians. However, it also acknowledges that social exclusion is a multi-dimensional issue, and that for some population groups, social exclusion has been intergenerational.<sup>29</sup>

Social inclusion has been broadly defined by the Australian Government as more than simply an economic issue but as ‘the opportunity to: secure a job; access services; connect with family, friends, work, personal interests and local community; deal with personal crisis; and [for people] to have their voices heard.’<sup>30</sup>

To progress its social inclusion agenda, the Australian Government established an Australian Social Inclusion Board on 21 May 2008. The role of the Board is to consult with the community and advise the Australian Government as to practical ways it can implement the Social Inclusion agenda.<sup>31</sup> The Australian Government has also established a Social Inclusion Committee of Cabinet, and a Social Inclusion Unit in the Department of the Prime Minister and Cabinet to further this agenda.<sup>32</sup>

The Australian Government has identified as a priority in its social inclusion agenda ‘closing the gap for Indigenous Australians’.<sup>33</sup> Through a number of sub-committees, work is ongoing as to how to best progress this agenda through the work of the Board. The Board is otherwise supportive of the Close the Gap Indigenous Health Equality Campaign.

29 Shadow Minister for Employment, Industrial Relations and Social Inclusion and Shadow Minister for Workforce Participation, *An Australian Social Inclusion agenda* (2007). At [http://www.labor.com.au/download/now/071122\\_social\\_inclusion.pdf](http://www.labor.com.au/download/now/071122_social_inclusion.pdf) (viewed 29 January 2009).

30 Shadow Minister for Employment, Industrial Relations and Social Inclusion and Shadow Minister for Workforce Participation, *An Australian Social Inclusion agenda* (2007). At [http://www.labor.com.au/download/now/071122\\_social\\_inclusion.pdf](http://www.labor.com.au/download/now/071122_social_inclusion.pdf) (viewed 29 January 2009).

31 Minister for Employment, Workplace and Industrial Relations, ‘Australian Social Inclusion Board’ (Media release, 21 May 2008). At [http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article\\_081009\\_115713.aspx](http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_081009_115713.aspx) (viewed 29 January 2009).

32 See Australian Government, *Social Inclusion*, <http://www.socialinclusion.gov.au> (viewed 29 January 2009).

33 Minister for Employment, Workplace and Industrial Relations, ‘Australian Social Inclusion Board’ (Media release, 21 May 2008). At [http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article\\_081009\\_115713.aspx](http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_081009_115713.aspx) (viewed 29 January 2009).

## 9. The National Health Sector Reform Agenda

Within the broader context of the National Reform Agenda, the Government has also started work on developing a National Health and Hospitals Reform Plan to improve health outcomes for patients in Australia's health and hospital system.

The COAG Health and Ageing Working Group and the National Health and Hospitals Reform Commission (NHHRC) have been established to progress this reform agenda. The NHHRC was established on 25 February 2008. Its terms of reference mandate that by June 2009 it will report on a long-term health reform plan to provide sustainable improvements in the performance of the health system addressing the need to improve Indigenous health outcomes.<sup>34</sup>

Their initial focus of the working group and the NHHRC was on the Australian Health Care Agreements (AHCAs). The AHCAs form the basis of the funding and service delivery relationship between the Australian government and the states and territories. The Australian Government signalled that it wanted to expand the scope of the AHCAs to ensure they include specific reform benchmarks. This is something I had advocated in my *Social Justice Report 2005* in relation to securing funding for Indigenous health services.<sup>35</sup>

In its first report *Beyond the Blame Game* (April 2008) the NHHRC listed closing the gap in Indigenous health as its first national priority for health reform. It proposed a series of performance indicators attached to the AHCAs including in relation to Indigenous life expectation and infant mortality.<sup>36</sup>

Since the founding of the NHHRC, the Close the Gap Steering Committee for Indigenous Health Equality has met with the NHHRC members and made submissions to them setting out our approach to Indigenous health equality and how this can be progressed through its work. The main recommendations are set out below.

### **Text Box 4: Summary recommendations made to the NHHRC by the Close the Gap Steering Committee, July 2008**

- That an appropriately funded, long-term national plan of action to achieving Indigenous life expectation and health equality by 2030 is established as a priority, and that within this are integrated a range of health status and other targets as set out in the *Close the Gap National Indigenous Health Equality Targets*.
- That the Australian Government establish a coordination body or mechanism (or designate an existing one) to oversee the activities of the range of government agencies with varying degrees of responsibility for Indigenous health with the primary aim of supporting the Australian Government's target of achieving Indigenous life expectation and health equality by 2030.

34 National Health and Hospital Reform Commission, *Terms of Reference* (2008). At <http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/terms-of-reference> (viewed 29 January 2009).

35 See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2006) p 85.

36 National Health and Hospital Reform Commission, *Beyond the Blame Game, Accountability and performance indicators for the next Australian Health Care Agreements* (2008) p 29. At <http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/commission-11p> (viewed 29 January 2009).

- That the Australian Government establish a monitoring body or mechanism to monitor the activities of the range of government agencies with varying degrees of responsibility for Indigenous health with the primary aim of supporting the Australian Government's target of achieving Indigenous life expectancy and health equality by 2030.
- That accountability and responsibility for the achievement of Indigenous health equality by 2030 and the determinants of this (including, but not limited, to equity of access to primary health care and hospital services) be clearly defined and appropriately established among Australian governments.
- That appropriate Indigenous health equality targets for the Commonwealth, states and territories are set out in the Australian Health Care Agreements in relation to those areas of the health system for which they are responsible.<sup>37</sup>

The Close the Gap Steering Committee for Indigenous Health Equality welcome that the NHHRC has listed the achievement of Indigenous health equality as the first national healthcare challenge, when it articulated goals to shape the reform of the health and hospital system.<sup>38</sup>

The National Health and Hospitals Reform Plan (NHHRP) has the potential to radically re-shape the Australian health system and holds great potential for facilitating improvements to the health of Indigenous Australians. A number of other health system reform processes and inquiries have also commenced at the same time the NHHRP is undertaking its task. These are outlined below.

### 9.1 Preventative Health Taskforce

The Preventative Health Taskforce was established on 9 April 2008 to provide 'evidence-based advice to governments and health providers on preventative health programs and strategies, focusing on the burden of chronic disease currently caused by obesity, tobacco and the excessive consumption of alcohol'.<sup>39</sup> The Taskforce will report directly to the Minister for Health and Ageing.

The Taskforce's main task for 2008–09 will be to provide the Government with advice on the framework for the Preventative Health Partnerships between the Commonwealth and the state and territories and to develop a National Preventative Health Strategy. According to its terms of reference, the taskforce will also provide advice on the most effective strategies for targeting prevention in high risk sub-populations including Aboriginal and Torres Strait Islander peoples.<sup>40</sup>

The work of this Taskforce is vital to the achievement of Indigenous health equality given the heavy toll on Indigenous health taken by chronic diseases and associated factors such as tobacco smoking and obesity.

In November 2008, the Steering Committee for Indigenous Health Equality in a submission to the Taskforce recommended the adoption of the following targets;

- *Smoking cessation:* By 2020, to have reduced the rate of smoking in the Indigenous population to that of the non-Indigenous population;

37 Steering Committee for Indigenous Health Equality, *Submission to the National Health and Hospital Reform Commission* (18 August 2008).

38 National Health and Hospital Reform Commission, *Beyond the Blame Game, Accountability and performance indicators for the next Australian Health Care Agreements* (2008) p 12. At <http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/commission-11p> (viewed 29 January 2009).

39 See Preventative Health Taskforce, <http://www.preventativehealth.org.au> (viewed 29 January 2009).

40 See Preventative Health Taskforce, <http://www.preventativehealth.org.au> (viewed 29 January 2009).

- *Food and nutrition:* By 2018 (within ten years) at least 90% of Indigenous families have access to a standard healthy food basket (or supply) at the cost of less than 25% of their available income;
- *Alcohol consumption:* Reduce per capita consumption rates of alcohol and other drugs to the national average by 2020.

All these are taken from the *National Indigenous Health Equality Targets*. We also recommended targeted approaches to mental health, mothers and babies, wider programmes for smoking, nutrition, alcohol and physical activity, oral health including the fluoridisation of community water supplies, communicable diseases and housing and environmental health.

More broadly we recommended that the work of the National Preventative Health Taskforce in relation to Indigenous peoples be located within a long-term national plan of action for achieving equality in Indigenous life expectation and health equality by 2030.<sup>41</sup>

## 9.2 Office of Rural Health

The Office of Rural Health was established on 1 July 2008 within the Department of Health and Ageing to drive rural health reform in response to the findings of the Audit of Health Workforce in Rural and Regional Australia. The audit found that the current supply of health professionals is not sufficient to meet current needs and the supply of health professionals in many rural and regional areas is low to very poor.

As a first priority, over the next 12 months the Office will review the Australian Government's 60 targeted rural health programs, as well as the classification systems that determine eligibility for rural program funding. It is anticipated that there will be broader stakeholder consultation at appropriate stages throughout the process.<sup>42</sup>

Preliminary discussions between my Office and the Office of Rural Health have confirmed that many of the rural health programs under review have strong Indigenous components. The Steering Committee will actively engage with the consultation process around this review in 2009.

## 9.3 The development of a Primary Health Care Strategy

An Expert Reference Group for the National Primary Health Care Strategy was established on 11 June 2008. The reference group will look at how to deliver better frontline care to families across Australia as it develops a National Primary Health Care Strategy.

This strategy could have an enormous impact on the delivery of primary health care services to Indigenous Australians, and the Australian government's commitment in the Statement of Intent to have in place the necessary primary health care by 2018 to support the achievement of Indigenous health equality by 2030. Such a strategy could also impact enormously on the capacity of the Aboriginal community controlled health services.

A review of the Medicare Benefits Schedule primary care items is also being undertaken alongside development of the Primary Health Care Strategy – with a focus on reducing red tape for doctors, simplifying the Medicare schedule, and giving more support to

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41 Steering Committee for Indigenous Health Equality, *Submission to the National Preventative Health Taskforce* (4 December 2008).

42 Minister for Health and Ageing, 'Office of Rural Health Established' (Media Release, 2 July 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr102.htm?OpenDocument&yr=2008&mth=7> (viewed 29 January 2009).

prevention.<sup>43</sup> Such a review should also look at how Indigenous Australians can also access Medicare subsidies at the same rate as other Australians, and in a way that supports the achievement of Indigenous health equality by 2030.

A discussion paper, *Towards a National Primary Health Care Strategy*, was released by the Australian Government as part of this review on 15 October 2008. This highlighted poorer Indigenous health and the need for an address to Indigenous peoples' access to primary health care as a priority. It also signaled the beginning of a public consultation process due to close on 27 February 2009.<sup>44</sup>

### 9.4 Review of maternity services

Established on 10 May 2008, the Review is described as

the first step in developing a comprehensive plan for maternity services into the future. It aims to canvass a wide range of issues relevant to maternity services, including antenatal services, birthing options, postnatal services up to six weeks after birth, and peer and social support for women in the perinatal period; ensure that all interested parties have an opportunity to participate; and inform the development of a National Maternity Services Plan.<sup>45</sup>

The Steering Committee welcome the fact that the discussion paper released by the review team as the basis of its consultation process *Improving Maternity Services in Australia* was developed with reference to the *Framework for Implementation of Primary Maternity Services in Australia*, which in turn endorsed a guiding set of principles in relation to reform of the delivery of maternity services including: 'working to reduce the health inequalities faced by Aboriginal and Torres Strait Islander mothers and babies'.

The discussion paper also refers to:

- the inequalities in access to maternity services experienced by Indigenous women. The discussion paper acknowledged the association between an increase in access to maternity services and a decline in the infant mortality rate;
- the significantly higher rates of smoking during pregnancy reported among Indigenous women when compared to non-Indigenous women;
- the reported decline in the rates of breastfeeding among Indigenous mothers.<sup>46</sup>

The Steering Committee's main recommendations to the review team are set out below.

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43 Minister for Health and Ageing, 'National Primary Health Care Strategy' (Media Release, 11 June 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr096.htm> (viewed 29 January 2009).

44 Department of Health and Ageing, *Towards a New Primary Health Care Strategy* (2007). At <http://www.health.gov.au/internet/main/publishing.nsf/Content/PHS-DiscussionPaper> viewed 29 January 2009).

45 Department of Health and Ageing, *Maternity Services Review*, [www.health.gov.au/maternityservicesreview](http://www.health.gov.au/maternityservicesreview) (viewed 29 January 2009).

46 Department of Health and Ageing, *Improving Maternity Services in Australia: A discussion paper from the Australian Government* (2008), p 4–7. At [http://www.health.gov.au/internet/main/publishing.nsf/Content/25923C2181709220CA2574BB0001D9F/\\$File/Improving\\_Maternity\\_Services\\_In\\_Australia.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/25923C2181709220CA2574BB0001D9F/$File/Improving_Maternity_Services_In_Australia.pdf) (viewed 29 January 2009).

### Text box 5: Main recommendations of the Steering Committee to the Maternity Services Review Team<sup>47</sup>

1. That the commitments made by the Council of Australian Governments (COAG) and the Australian Government in relation to the achievement of Indigenous health status and life expectation equality by 2030, as set out in the *Close the Gap National Indigenous Health Equality Summit Statement of Intent*, inform the findings of the Review, and provide its broader context.
2. That the development of any new strategy for the provision of maternity services to Indigenous women is integrated with a national plan of action towards achieving Indigenous health equality by 2030.
3. That any new strategy in relation to the provision of maternity services to Indigenous women (in the broader context of a national plan of action towards achieving Indigenous health equality by 2030) is developed in partnership with Indigenous Australians and their representatives.
4. That a range of targets and indicators, as set out in the *Close the Gap National Indigenous Health Equality Targets* are adopted in relation to the provision of maternal health services for Indigenous women, and the health status of Indigenous mothers and infants. These include:
  - That all Indigenous women and children have access to culturally appropriate mother and baby programs within 5 – 10 years with reference to the process and indicators set out in the *National Indigenous Health Equality Targets*.<sup>48</sup>
  - That a 50 per cent reduction in the difference between Indigenous and non-Indigenous Australian's rates of preterm birth and low birth weight (LBW) be achieved within 5 – 10 years;<sup>49</sup>
  - That at least 75% of all pregnant women present for their first antenatal assessment within the first trimester within 5 – 10 years;<sup>50</sup>
  - Developing health promotion programs targeting smoking and alcohol consumption in pregnancy by 2013.<sup>51</sup>
  - A 4% annual reduction in the rate of Indigenous women smoking during pregnancy with a view to Indigenous and non-Indigenous rates equalising by 2020.<sup>52</sup>

47 Steering Committee for Indigenous Health Equality, *Submission to the Maternity Services Review* (31 October 2008).

48 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 23, 34–36. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

49 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 23, 34–36. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

50 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 23. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

51 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 36. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

52 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 24. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

- The development and implementation of a national 'nutritional risk' scheme for at-risk mothers, infants and children by 2018. Eligibility for such a scheme includes a low household income, pregnancy, postpartum, or breast-feeding, or a child under the age of five years, in the presence of nutritional risk assessed by a health professional. This risk may include: inadequate diet; abnormal weight gain during pregnancy; a history of high-risk pregnancy; child growth problems such as stunting, underweight, or anaemia; and homelessness.<sup>53</sup>

## 10. The future funds

The Australian Government has also signalled that it will establish a \$10 billion Health and Hospital Fund to support strategic investments in health. This is the single biggest investment in health infrastructure ever made by an Australian Government, drawn from the 2007–08 and 2008–09 surpluses. A proportion of future surpluses may be allocated to the Fund as appropriate. Expenditure from the Health and Hospital Fund will be subject to consideration through the Budget process each year.<sup>54</sup>

The future fund has the potential to bring enormous benefits to Indigenous communities, and the Steering Committee have flagged discussions with the guardians of the fund once it is established in early 2009.

On 5 January 2009, by a legislative instrument, *HHF Evaluation Criteria* were determined by the Minister for Ageing. These indicate that a primary focus of the fund is to progress health infrastructure development.<sup>55</sup>

We believe that at very least allocations from this fund to Indigenous health infrastructure should reflect the proportion of Indigenous peoples in relation to the total population. In other words, that at least 2.5% of the total funding allocated should be allocated to directly benefit Indigenous communities. Ideally, this percentage would be closer to 5% in recognition of the historical lack of investment in Indigenous health services, and their greater health needs.

The Steering Committee has made a similar proposal in relation to the Building Australia Fund as set out in Text box 6 below.

### **Text Box 6: Building Australia Fund and infrastructure in Indigenous communities<sup>56</sup>**

Infrastructure Australia was created on 9 April 2008 to create a strategic blueprint for the nation's infrastructure needs and assist its implementation. It also advises the Australian Government on the expenditure of the \$20 billion Building Australia Fund. It does this with reference to a national Infrastructure Priority List that it is charged with compiling. To qualify for the list, an infrastructure need must be defined as of national significance.

53 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 35. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

54 Minister for Health and Ageing, 'Investing in a health system for the future' (Media release, 13 May 2008). At [http://www.health.gov.au/internet/budget/publishing.nsf/Content/1A1A16A835BDAADACA257448002D6D07/\\$File/08\\_health001.pdf](http://www.health.gov.au/internet/budget/publishing.nsf/Content/1A1A16A835BDAADACA257448002D6D07/$File/08_health001.pdf) (viewed 29 January 2009).

55 Minister for Ageing, *HHF Evaluation Criteria 2009* (2009).

56 Steering Committee for Indigenous Health Equality, *Submission to Infrastructure Australia* (15 October 2008).

In a submission made to Infrastructure Australia in July 2008, the Steering Committee stated that they believed that an address to infrastructure needs in Indigenous communities falls within that remit, pertaining not only to economic development in those communities, but also to the Australian Government's goal of providing the necessary infrastructure by 2018 to support the achievement of Indigenous health and life expectation equality by 2030, as set out in the *Close the Gap National Indigenous Health Equality Statement of Intent*.

The Steering Committee focused on addressing five national infrastructure equality gaps that directly contribute to the significantly poorer state of health found among Australia's Aboriginal and Torres Strait Islander peoples when compared to the non-Indigenous population.

More broadly we submitted that in defining the Infrastructure Priority List, Infrastructure Australia should consider the goal of achieving Indigenous health equality an outstanding national priority, reflecting the importance placed on this by the Australian Government as reflected in the Statement of Intent.

To support these commitments, we recommended the adoption of a targeted, and properly funded national plan to address the following major infrastructure gaps in Indigenous communities by 2018 (as set out in detail in the body of the submission):

- Housing, environmental health and health services capital works;
- Transport infrastructure;
- Food provision related infrastructure;
- Communications infrastructure; and
- Water and electricity supply.

We further recommended that, as a minimum, the inclusion of Indigenous infrastructure projects on the Infrastructure Priority List should reflect the proportion of Indigenous peoples in relation to the total population. In other words, that at least 2.5% of the total funding allocated to infrastructure projects should be allocated to infrastructure that will directly benefit Indigenous communities. Ideally, this percentage would be closer to 5% in recognition of the historical lack of investment in Indigenous communities' infrastructure.

We also recommend that this plan be developed in partnership with Indigenous Australians and their representatives, and that it be coordinated with an overall plan to achieve Indigenous health equality by 2030.<sup>57</sup>

## 11. The Australian Charter of Healthcare Rights

A significant domestic application of the right to health in an Australian domestic context occurred with the endorsement of the *Australian Charter of Healthcare Rights* (the Charter) by Australian health ministers in July 2008. The Charter was developed by the Australian Commission on Safety and Quality in Healthcare, founded by the Australian Health Ministers Conference in December 2006.

The Charter allows patients, consumers, families, carers and services providers to have a common understanding of the rights of people receiving healthcare.

The Charter is significant as it explicitly acknowledges the right to health as one of its three guiding principles, and, as such recognises 'everyone's right to have the highest possible standard of physical and mental health'; as well as specific rights in relation to participation and cultural respect (as set out in text box 7, below). This recognition of the right to health in a domestic context by Australian governments underscores the validity

57 Steering Committee for Indigenous Health Equality, Submission to Infrastructure Australia (15 October 2008).

of the approach of the Close the Gap Campaign which is essentially an application of the right to health in the context of Indigenous health inequality in Australia.

<b>Text Box 7: The Australian Charter of Healthcare Rights (extracted in full)<sup>58</sup></b>	
<p>The Australian Charter of Healthcare Rights describes the rights of patients and other people using the Australian health system. These rights are essential to make sure that, wherever and whenever care is provided, it is of high quality and is safe.</p> <p>The Charter recognises that people receiving care and people providing care all have important parts to play in achieving healthcare rights. The Charter allows patients, consumers, families, carers and services providing health care to share an understanding of the rights of people receiving health care. This helps everyone to work together towards a safe and high quality health system. A genuine partnership between patients, consumers and providers is important so that everyone achieves the best possible outcomes.</p> <p><i>Guiding Principles</i></p> <p>These three principles describe how this Charter applies in the Australian health system.</p> <ol style="list-style-type: none"> <li>1. Everyone has the right to be able to access health care and this right is essential for the Charter to be meaningful.</li> <li>2. The Australian Government commits to international agreements about human rights which recognise everyone's right to have the highest possible standard of physical and mental health.</li> <li>3. Australia is a society made up of people with different cultures and ways of life, and the Charter acknowledges and respects these differences.</li> </ol>	
<b>My rights</b>	<b>What this means</b>
<i>Access</i>	
I have a right to health care.	I can access services to address my health needs.
<i>Safety</i>	
I have a right to receive safe and high quality care.	Receive safe and high quality health services, provided with professional care, skill and competence.
<i>Respect</i>	
I have a right to be shown respect, dignity and consideration	The care provided shows respect to me and my culture, beliefs, values and personal characteristics
<i>Communication</i>	
I have a right to be informed about services, treatment options and cost in a clear and open way	I receive open, timely and appropriate communication about my health care in a way I understand.

58 Australian Commission on Safety and Quality in Health Care, *Australian Charter of Healthcare Rights*, 2008. Available online at: <http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/content/PriorityProgram-01>

<i>Participation</i>	
I have a right to be included in decisions about my health care.	I may join in making decisions and choices about my care and about health service planning.
<i>Privacy</i>	
I have a right to privacy and confidentiality of my personal information.	My personal privacy is maintained and proper handling of my personal health and other information is assured.
<i>Comment</i>	
I have a right to comment on my care and have my concerns addressed.	I can comment on or complain about my care and have my concerns dealt with promptly.

The Charter applies to 'all health settings anywhere in Australia, including public hospitals, private hospitals, general practice and other ambulatory care environments. rights of patients and consumers when seeking or receiving healthcare services.'<sup>59</sup> While the significance of the Charter is therefore limited – it could not, for example, be used to leverage the provision of services where there are none (as is often the case in remote Indigenous communities)<sup>60</sup> – the Close the Gap Campaign partners are exploring how the Charter may prove a useful tool for helping to ensure that urban-based Indigenous Australians, in particular, are able to access mainstream health services in urban settings as well as contributing to a mainstream health services' culture that is more responsive to Indigenous patients.

Complaints in relation to the upholding of rights in the Charter by health services are to be handled by state based Health Care Complaints Commissioners.<sup>61</sup>

## 12. Additional resourcing for Indigenous health related issues

All of this activity has also begun to translate into substantial resource commitments (amounting to over 5 billion dollars) towards Indigenous health equality by Australian governments in the past 12 months. These commitments are set out below.

59 Australian Commission on Safety and Quality in Health Care, *Healthcare Rights Charter Endorsed for Australia*, (Media release) 23 July 2008. Available online at: [http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/content/MediaRelease\\_2008-07-23-CharterOfRights](http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/content/MediaRelease_2008-07-23-CharterOfRights).

60 See Australian Commission on Safety and Quality in Health Care, *Roles in Realising the Australian Charter of Healthcare Rights*. This notes that 'an individual's right to health may be limited by his or her geographic location and the availability of health services' and asks patients to 'understand that in some circumstances you may need to travel or wait for the services you need'. Australian Commission on Safety and Quality in Health Care, *Roles in Realising the Australian Charter of Healthcare Rights*, 2008. Available online at: <http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/content/PriorityProgram-01>.

61 Australian Commission on Safety and Quality in Health Care, *Australian Charter of Healthcare Rights, A guide for patients, consumers, carers and their families*, 2008. Available online at: <http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/content/PriorityProgram-01>.

**Text Box 8: Significant financial commitments to closing the Indigenous life expectation gap**

*Close the Gap spending 2008–09 Budget*

The Australian Government announced \$334.8 million worth of expenditure towards closing the life expectancy gap between Indigenous and non-Indigenous Australians within a generation at the 2008–09 budget.

Measures included \$101.5 million extra funding for maternal and child health services:

- an additional \$90.3 million, as well as matched funding of \$75 million from State and Territory governments, to improve child and maternal health services; and
- \$11.2 million to tackle acute rheumatic fever and rheumatic heart disease among Indigenous children.

Measures in relation to alcohol, tobacco and substance abuse:

- a commitment of \$49.3 million over four years, through the Council of Australian Governments (COAG), to improve access to drug and alcohol services, including residential treatment and rehabilitation facilities.; and
- a \$14.5 million investment over four years in the Indigenous Tobacco Control Initiative, to help tackle high rates of smoking in Indigenous communities.

In relation to health services and health workforce:

- a \$21.5 million commitment over five years to improve the capacity of Northern Territory health services; and
- \$19 million over three years towards a National Indigenous Health Workforce Training Plan to develop an Indigenous health workforce.

In addition, the Government committed:

- \$99.7 million to expand primary health care in the Northern Territory, including establishing a remote area health corps agency to recruit more doctors, nurses and other health professionals to work in remote Indigenous communities.
- \$13.6 million to complete the delivery of follow-up dental, hearing and ear, nose and throat services for Aboriginal children in remote communities and town camps in the Northern Territory in 2008–09. This brings the total Australian Government commitment for health initiatives under the Northern Territory Emergency Response to \$196.2 million over three years.<sup>62</sup>

*National Partnership to address the needs of Indigenous children*

At the July COAG meeting, COAG agreed in principle to a National Partnership with joint funding of around \$547.2 million over six years to address the needs of Indigenous children in their early years:

62 Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Health and Ageing, 'Closing the Gap in Indigenous Health' (Media Release, 13 May 2008). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/budget08\\_i-health\\_13may08.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/budget08_i-health_13may08.htm) (viewed 29 January 2009).

The National Partnership is based on evidence that improvements in Indigenous child mortality require better access to antenatal care, teenage reproductive and sexual health services, child and maternal health services and integrated child and family services. Bilateral plans for implementing the reforms will be agreed between each jurisdiction and the Commonwealth for COAG's consideration in October 2008. COAG further agreed to consider in mid 2009 a progress report and advice about the contribution of COAG's broader reform agenda to overcoming Indigenous children's disadvantage. The Commonwealth will continue to explore with the States the role that conditions on benefit payments could play in increasing the take up by vulnerable families, including vulnerable Indigenous families, of early childhood, family support and child and maternal health services.<sup>63</sup>

*National Partnerships announced at the 29 November 2008 COAG meeting*

On 29 November 2008, COAG agreed to a significant package of measures to close the gap in Indigenous health and on related issues.

The Communiqué from the meeting notes that:

COAG has previously agreed to six ambitious targets for closing the gap between Indigenous and non-Indigenous Australians across urban, rural and remote areas. Since the targets were agreed in December 2007 and March 2008, all governments have been working together to develop fundamental reforms to address these targets. Governments have also acknowledged that this is an extremely significant undertaking that will require substantial investment. COAG has agreed this year to initiatives for Indigenous Australians of \$4.6 billion across early childhood development, health, housing, economic development and remote service delivery.

These new agreements represent a fundamental response to COAG's commitment to closing the gap. Sustained improvement in outcomes for Indigenous people can only be achieved by systemic change. Through these agreements, all governments will be held publicly accountable for their performance in improving outcomes in these key areas...

To progress the targets for closing the gap between Indigenous and non-Indigenous Australians, all governments have been developing fundamental reforms recognising that substantial investment is required.

Governments will develop Implementation Plans in consultation with Indigenous people.

(In addition to) targeted initiatives for Indigenous Australians... (there will also be) a strong focus on better Indigenous outcomes through the new National Agreements and general NPs, aimed at assisting disadvantaged groups, including in education, health and housing.

In this way, COAG is ensuring that the closing the gap targets are being supported across the range of reformed financial arrangements between the Commonwealth and the States.

*Health National Partnership*

The Commonwealth and the States agreed to an Indigenous Health National Partnership (HNP) worth \$1.6 billion over four years, with the Commonwealth contributing \$806 million and the States \$772 million. This is intended to contribute to addressing the COAG agreed closing the gap targets for Indigenous Australians, closing the life expectancy gap within a generation and halving the mortality gap for children under five within a decade. It includes expanded primary health care and targeted prevention activities to reduce the burden of chronic disease.

63 Council of Australian Governments, *Communiqué – 3 July 2008*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-07-03/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm) (viewed 28 January 2009).

The Health National Partnership is described by COAG as 'a down payment on the significant investment needed by both levels of government to close the unacceptable gap in health and other outcomes between Indigenous and non-Indigenous Australians'.

The HNP is focused on:

- reduced smoking rate among Aboriginal and Torres Strait Islander peoples;
- reduced burden of diseases for Aboriginal and Torres Strait Islander communities;
- increased uptake of Medicare Benefits Schedule-funded primary care services to Indigenous people with half of the adult population (15 65 years) receiving two adult health checks over the next four years;
- significantly improved coordination of care across the care continuum; and
- over time, a reduction in average length of hospital stay and reduction in readmissions.

This means that over a five-year period, around 55 per cent of the adult Indigenous population (around 155,000 people) will receive a health check with about 600,000 chronic disease services delivered. More than 90,000 Indigenous people with a chronic disease will be provided with a self-management program, while around 74,500 Indigenous people will receive financial assistance to improve access to Pharmaceutical Benefits Scheme medicines.

### *National Partnership on Remote Indigenous Housing*

All States and the Northern Territory have agreed to a new 10-year National Partnership on remote Indigenous housing, in which the Commonwealth will provide an additional \$1.94 billion over 10 years (\$834.6 million over five years) to address significant overcrowding, homelessness, poor housing conditions and the severe housing shortage in remote Indigenous communities. Improving housing conditions will provide the foundation for lasting improvements in health, education and employment and make a major contribution towards closing the gap in Indigenous disadvantage.

The total package of \$1.94 billion over 10 years will provide:

- up to 4,200 new houses to be built in remote Indigenous communities; and
- upgrades to around 4,800 existing houses with a program of major repairs commencing in 2008–09.

The National Partnership also clarifies the responsibilities of the Commonwealth, the states and the Northern Territory, with the states the main deliverer of housing in remote Indigenous communities, providing standardised tenancy management and support consistent with public housing tenancy management.

The states and the Commonwealth will work towards clearer roles and responsibilities and funding with respect to municipal services and ongoing maintenance of infrastructure and essential services in remote areas.

The National Partnership will commence on 1 January 2009 with implementation plans to be finalised by 1 April 2009.

### *Further national partnerships*

A further two new National Partnerships were agreed relating to Economic Participation (\$228.8 million – \$172.7 million Commonwealth funding and \$56.2 million state funding over five years) and Remote Service Delivery (\$291.2 million over six years).<sup>64</sup>

64 Council of Australian Governments, *Communique – 29 November 2008*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-11-29/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/index.cfm) (viewed 29 January 2009).

The Close the Gap Steering Committee for Indigenous Health Equality welcomes these commitments and understands the magnitude and ambition that they represent. They are a substantial down payment. It is hoped that in the future they will be seen as the watershed moment in the efforts of all Australian governments to close the life expectancy gap.

Financial commitments of this size, accompanying the current reform agenda, bodes well for the future of a partnership between Indigenous peoples and their representatives and the future of our collective efforts to close the Indigenous health and life expectancy gap.

## Part 3: Securing health equality within a generation

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The past two years have seen a significant shift in approaches to address Indigenous health inequality. As the developments outlined above reveal, there is momentum and a depth of commitment to close the life expectancy gap faced by Indigenous Australians that is unprecedented.

Of particular significance are the following developments:

- First, is the mobilisation and organisation of the Indigenous health peak bodies, the mainstream health peak bodies and NGOs behind the ‘Close the Gap’ Campaign for Indigenous Health Equality, speaking with one voice about what needs to be done to achieve Indigenous health equality. The Campaign approach has brought together considerable expertise across the health, human rights and NGO sectors who are committed to working together in order to meet this national challenge. The approach has not been to blame government or place the responsibility for change solely at the feet of government. It has created the opportunity for an unprecedented new partnership between government, the health sector and civil society where all have a role to play.
- Second, is the unprecedented level of bipartisan commitment as well as partnerships between all Australian governments to close the gap. The Prime Minister’s personal support and leadership has also been a critical factor in driving change and in creating the momentum for a national effort to achieve Indigenous health equality by 2030. The signing of the Statement of Intent constitutes the basis for a national partnership across society, and across governments, to achieve Indigenous health equality by 2030.
- Third, the development of *National Indigenous Health Equality Targets* provides a focus for the specific challenges that exist if we are to meet the generational objective of health equality. They have challenged the health sector to consider specific needs to be addressed so that we can break through from the approaches of the past.
- Fourth, is the multiple reform processes and bodies that have been established in the last year to progress various aspects of health sector reform, including with explicit reference to improving Indigenous health. When combined with the National Reform Agenda through COAG this provides unprecedented opportunity to ensure sufficient accountability for performance across different areas of the health sector and across governments. The central place of close the gap indicators in the COAG reform agenda is testament to this.

The challenge now is to build on this reform agenda and on the weighty commitments that have been made to ensure that any change is enduring and is capable of meeting the generational challenge of health equality.

The Statement of Intent for Indigenous Health Equality provides a framework to ensure that our efforts are sustained over the next 25 years. As set out above, it commits the Australian Government and other signatories to:

- developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve health equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030;
- ensuring primary health care services and health infrastructure for Aboriginal and Torres Strait Islander peoples which are capable of bridging the gaps in health standards by 2018;
- ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs;
- measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

This defines the major challenges for closing the gap over the next generation. Each of these challenges is discussed in further detail below.

## 1. Creating a partnership for change

Many of the developments described above refer to initiatives by government. What remains is for detailed engagement with Indigenous peoples, organisations and communities, so that Close the Gap is truly a shared ambition.

When talking of partnership, the Close the Gap Steering Committee for Indigenous Health Equality mean a partnership between:

- Indigenous peoples and their representatives;
- Australian governments (with an internal, cross sectoral dimension; and at the intergovernmental level); and
- Key players in the Indigenous and non-Indigenous health sector.

The Close the Gap Steering Committee have identified partnership as being so fundamental to the achievement of Indigenous health equality that they included partnership targets in the *National Indigenous Health Equality Targets*. These targets propose that within 2 years (meaning by the end of 2009):

- a national framework agreement to secure the appropriate engagement of Aboriginal people and their representative bodies in the design and delivery of accessible, culturally appropriate and quality primary health care services is established; and
- that nationally agreed frameworks exist to secure the appropriate engagement of Aboriginal people in the design and delivery of secondary care services.<sup>65</sup>

As already discussed, there have been many developments in the past year where the Australian Government has reiterated the desire and need for a new partnership with Indigenous peoples to progress closing the gap across a range of indicators including health.

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65 Aboriginal and Torres Strait Islander Social Justice Commissioner and Close the Gap Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets* (2008) p 22. At [http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf) (viewed 28 January 2009).

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The Close the Gap Steering Committee for Indigenous Health Equality believes that Australian governments are aspiring to engage with Indigenous peoples more effectively as partners. The challenge is to identify *how* this is to be achieved.

The human rights based approach to development provides the starting point for such a new relationship.

The Australian Human Rights Commission and the United Nations Permanent Forum on Indigenous Issues have prepared international guidelines on developing partnerships with Indigenous peoples, based on human rights principles. These are contained in the following document: *Engaging the marginalised: Partnerships between Indigenous Peoples, governments and civil society*. The guidelines recommend:

- *A human rights based approach to development* – whereby indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives; and with such participation based on the principle of free, prior and informed consent, which includes governments and the private sector providing information that is accurate, accessible, and in a language the indigenous peoples can understand.
- *Mechanisms for representation and engagement* – whereby Governments should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities; and where indigenous peoples have the right to choose their representatives and the right to specify the decision making structures through which they engage with other sectors of society;
- *Design, negotiation, implementation, monitoring, and evaluation* – whereby frameworks for engagement should allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes; and where indigenous peoples and communities should be invited to participate in identifying and prioritizing objectives, as well as in establishing targets and benchmarks (in the short and long term).
- *Capacity-building (of government and Indigenous communities)* – whereby governments support efforts to build the capacity of indigenous communities so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them; and similarly, where the capacity of government is also built, including by increasing knowledge of indigenous peoples and awareness of the human rights

based approach to development so that they are able to effectively engage with indigenous communities.<sup>66</sup>

In order to facilitate the development of such a partnership, the Close the Gap Steering Committee for Indigenous Health Equality hosted a 'Partnerships in Action' workshop in Sydney over 26 – 27 November 2008. To this were invited key Australian government officials, including those from the health sectors and those active in the COAG and other reform processes.

This workshop identified the foundational elements of such a partnership as including:

- *A common vision* for the task ahead;
- *Trust* – something that must be built over time, from all sides;
- *Respectful engagement*;
- *Understanding of each others' potential contribution to the task.*  
Through rigorous investigation, the parties must agree as to each others strengths and weaknesses, resources and so, and decide what each can appropriately bring to the table;
- *Embracing cultural change* – on everyone's part, recognising that partnership means that ways of working are going change.
- *Sharing responsibility* for outcomes; and
- *Accountability* to each other.<sup>67</sup>

It was also noted that there are examples already of successful relationships between Australian governments and Aboriginal community controlled health services at the state/territory level. These provide models for partnership mechanisms at the national level.

A key area for partnership is in relation to service delivery. Australian governments, historically, have failed to effectively deliver services to Indigenous communities. In particular, there needs to be a shifting in the mindset of government on service delivery:

- there is a need for government to relinquish absolute control in relation to service delivery. Empowering people at the local level will bring the greatest change;

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66 Other elements of good programming practices that are also essential under a human rights based approach include that:

- People are recognised as key actors in their own development, rather than passive recipients of commodities and services.
- Participation is both a means and a goal.
- Strategies are empowering, not disempowering.
- Both outcomes and processes are monitored and evaluated.
- Analysis includes all stakeholders.
- Programs focus on marginalised, disadvantaged, and excluded groups.
- The development process is locally owned.
- Programs aim to reduce disparity.
- Both top-down and bottom-up approaches are used in synergy.
- Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
- Measurable goals and targets are important in programming.
- Strategic partnerships are developed and sustained.
- Programs support accountability to all stakeholders.

See United Nations, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (2003). At [www.unescobkk.org/fileadmin/user\\_upload/appeal/human\\_rights/UN\\_Common\\_understanding\\_RBA.pdf](http://www.unescobkk.org/fileadmin/user_upload/appeal/human_rights/UN_Common_understanding_RBA.pdf) (viewed 29 January 2009).

67 Steering Committee for Indigenous Health Equality, *Partnership in Action Workshop Report* (2008).

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- it is important to build on current structure and breadth of knowledge, in particular that of the Aboriginal community controlled health services; and
- there is a need to be open to different views and approaches, particularly where things haven't worked in the past.

Partnerships themselves can be 'measured' and monitored in a variety of ways. This could be in terms of inputs, outputs or outcomes:

- inputs, by establishing processes for partnership, or by putting structures for partnership in place;
- outputs, by measuring the number of meetings and who participated in them; and
- outcomes, by measuring 'close the gap' outcomes.

This would include a qualitative component to test whether partners feel engaged in the process.

It is absolutely vital that attention is paid to the creation of such a partnership over 2009. There are many questions surrounding such a partnership, not least of which is the potential role of a national Indigenous representative body.

Regardless, Australian governments must sit down with the relevant parties and work out how this is to be realised as soon as possible. The foundation of such a partnership should be laid at the dedicated COAG Close the Gap meeting scheduled to take place in mid 2009.<sup>68</sup>

## 2. A national plan of action

As noted, the Statement of Intent commits the Australian Government to developing, 'a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030'.

It is common sense that such a plan be created in order to take into account all the determinants of the poorer health of Indigenous Australians, and in a way that can meet the 2030 target. In that regard it is vital as well that the many reform efforts underway (as discussed in part 1 of this chapter) are integrated into such a national plan of action. Without such coordination, there is the risk of duplication of effort on the one hand and on the other hand, of significant issues that do not squarely fall within the purview of one reform process not receiving sufficient attention.

At its 28 November 2008 meeting, COAG also agreed to the National Indigenous Reform Agreement (NIRA) which

captures the objectives, outcomes, outputs, performance measures and benchmarks that all governments have committed to achieving through their various National Agreements and NPs in order to close the gap in Indigenous disadvantage. The NIRA provides an overarching summary of action being taken against the closing the gap

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<sup>68</sup> In October 2008, COAG agreed to convene a dedicated meeting in 2009 on closing the gap on Indigenous disadvantage. COAG has asked for advice on how the National Agreements will collectively lead to a closing of the gap and what further reforms are needed. COAG has also asked for a Regional and Urban Strategy to coordinate the delivery of services to Indigenous Australians and examine the role that private and community sector initiatives in education, employment, health and housing can make to the success of the overall strategy. COAG noted that it will work to develop a further reform proposal, including benchmarks and indicators for improvements in services and related outputs relevant to family and community safety, for consideration at the Closing the Gap COAG meeting to be held in 2009. See Council of Australian Governments, *Communique – 29 November 2008*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-11-29/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/index.cfm) (viewed 29 January 2009).

targets as well as the operation of the mainstream national agreements in health, schools, VET, disability services and housing and several NPs. The NIRA will be a living document, refined over time based on the effectiveness of reforms in closing the gap on Indigenous disadvantage.<sup>69</sup>

Such a plan could form the basis of a national plan of action for Indigenous health equality.

There is a clear need to work towards a process for developing a comprehensive, national action plan. The attributes of a long term, action plan include the clear identification of:

- What is to be done;
- The time frame for doing it;
- Who is going to do it;
- The cost;
- Where the funds will be found;
- How is it to be implemented; and
- How is it to be evaluated.

The Statement of Intent sets out the main principles underlying such a plan, namely:

- To ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs;
- To working collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples;
- To building on the evidence base and supporting what works in Aboriginal and Torres Strait Islander health, and relevant international experience;
- To supporting and developing Aboriginal and Torres Strait Islander community-controlled health services in urban, rural and remote areas in order to achieve lasting improvements in Aboriginal and Torres Strait Islander health and wellbeing;
- To achieving improved access to, and outcomes from, mainstream services for Aboriginal and Torres Strait Islander peoples;
- To respect and promote the rights of Aboriginal and Torres Strait Islander peoples, including by ensuring that health services are available, appropriate, accessible, affordable, and of good quality; and
- To ensure processes to measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

The Statement of Intent also sets out some core targets for such a national plan: as noted, that Indigenous health equality is achieved by 2030; and that 'primary health care services and health infrastructure for Aboriginal and Torres Strait Islander peoples ...are capable of bridging the gap in health standards by 2018'.

In addition to the targets in the Statement of Intent, the *National Indigenous Health Equality Targets* are intended to provide a further foundation for the creation of a comprehensive national plan of action to close the Indigenous health equality gap by 2030. These targets focus on:

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69 Council of Australian Governments, *Communique – 29 November 2008*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-11-29/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/index.cfm) (viewed 29 January 2009).

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- Specific, focused strategies that, if achieved, would deliver the greatest reduction in morbidity and mortality for Indigenous peoples; and
- The synergy between primary care, infrastructure, social and cultural determinants.

The specific targets on Primary Health Care focus on:

- access to culturally appropriate comprehensive primary health care services, particularly through Aboriginal community controlled services, at a level commensurate with need;
- Mainstream services provided to Aboriginal and Torres Strait Islander people in a culturally sensitive way and at a level commensurate with need; and
- Appropriate funding and resourcing – for comprehensive primary care; targeted programs; and access to mainstream funding schemes.

The specific infrastructure targets focus on:

- Workforce development: primary care practitioners, specialists, mental health and social and emotional wellbeing, and oral health;
- A clinically and culturally competent workforce;
- Health service facilities and capital works;
- Housing and environmental health; and
- Data quality issues.

Ultimately, the intention is that these targets provide a foundation point for negotiation – they were developed by individuals and organisations with extensive experience and expertise, and are evidenced based. They require high level political commitment – such as was demonstrated through the Statement of Intent – as well as long term, strategic planning for implementation and action.

### 3. Monitoring and accountability

A vital part of any national plan of action will include, in the words of the Statement of Intent: ‘To measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions’.

The Steering Committee has taken the view that all efforts to monitor and introduce accountability for the achievement of Indigenous health equality need to hang off a comprehensive, national action plan to achieve Indigenous health equality by 2030.

Monitoring is not an end in itself, but a way of progressively improving services. Data should drive change, not just tell us what exists. To this end, the Steering Committee welcomed the announcements made at the 28 November 2008 COAG meeting that COAG had agreed to a new framework for the Productivity Commission’s *Overcoming Indigenous Disadvantage Report* (OID) so that it is aligned with the six COAG closing the gap targets.<sup>70</sup>

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<sup>70</sup> In April 2002, COAG commissioned the Productivity Commission’s Steering Committee for the Review of Commonwealth/State Service Provision to produce a regular report against key indicators of Indigenous disadvantage, with a focus on areas where governments can make a difference. The resulting *Overcoming Indigenous Disadvantage* (OID) Report has been published every two years since 2003: Council of Australian Governments, *Communique – 29 November 2008*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-11-29/index.cfm](http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/index.cfm) (viewed 29 January 2009).

Challenges identified relating to existing frameworks, including the OID Framework, and data collection in general include:

- the monitoring of partnership, health status, health services, infrastructure, social determinants – the subject matters of the National Indigenous Health Equality Targets;
- measuring the quality of services delivered to Indigenous peoples;
- ensuring consistency of data in the multiple frameworks that exist – rather than different and conflicting sources of data or definitions;
- ensuring more accurate data (identification issues) as well as more comprehensive data (filling gaps in collections);
- ensuring that the proliferation of reporting and data that exists does not take away from time for actual work on the ground or is not a time cost issue for service delivery;
- the need to shift emphasis or rebalance the focus on monitoring of Indigenous services from financial accountability to program performance and outcomes;
- disaggregation – by service, region, jurisdiction, nationally and so on;
- standardised reporting formats for community use, service use, public use; and
- defining processes as to how the data will be used to drive change.<sup>71</sup>

There is also a need for a major effort to improve accuracy, coverage and availability of health data. In particular, the Steering Committee believe it is important to introduce accountability for fixing long-standing data gaps. The Steering Committee propose that:

- the Australian Bureau of Statistics should lead the effort in relation to vitals data (births, deaths etc);
- the Australian Institute of Health and Welfare should lead the effort in relation to hospital data (perinatal care, cancer, etc); and
- each jurisdiction should have specified levels of data completeness, perhaps attached to incentives and penalties to ensure compliance.

In the spirit of partnership, data collections should also be accessible to communities so that they can 'own' them as a tool for advocacy, and also to enable the partners to be accountable to each other.

## 4. Coordination of activities

In addition to a national plan of action, a coordinating body or mechanism to coordinate the many levels and sectors of Australian governments who would be involved in the achievement of Indigenous health equality is necessary.

In our submission to the National Health and Hospitals Reform Commission, the Steering Committee indicated that such a body would ideally satisfy the following criteria:

- Ministerial leadership (preferably the Minister of Health and Ageing);
- Clear terms of reference;
- It should be guaranteed appropriate, long-term funding to operate;

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71 Steering Committee for Indigenous Health Equality, *Partnership in Action Workshop Report* (2008).

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- It should have strong Indigenous representation among its membership/ staff and leadership roles; and
- It should be capable of independent reporting and making proposals for improvements to the coordination of efforts for achieving Indigenous health equality by 2030, as needed.<sup>72</sup>

Further work in this direction is being undertaken by the National Aboriginal Community Controlled Health Organisation (NACCHO) in a separate but complementary process to the Close the Gap Campaign.

In 2008, NACCHO began to develop proposals for what they initially called 'a new architecture of the delivery of Aboriginal and Torres Strait Islander Health'.<sup>73</sup> To facilitate this process they have published discussion papers<sup>74</sup>, and held two 'Think Tanks'. The first, held in August 2008, was attended largely by NACCHO member organisations and set an initial agenda for the process.<sup>75</sup>

A second Think Tank titled 'Investing in Community Control' is proposed for January 2009. It will bring together a broader range of stakeholders to consider the question of what legislative and administrative arrangements were needed to enable both the achievement of Indigenous health equality by 2030, and to ensure that as many Indigenous people as possible are able to access an Aboriginal community controlled health service.

There are some successful coordination and partnership mechanisms that are already working well, but these are mainly at the state/ territory level. A key challenge is to harness what is transferrable from these examples and ensure they are consistently applied to build a national coordination mechanism for the achievement of Indigenous health equality by 2030.

This will also require clear specification of accountability and responsibility:

- For each level of government;
- For COAG processes; and
- For services and programs (but with mutual responsibility between funder and service provider).

## 5. Beyond the health sector

The Statement of Intent includes a commitment '[t]o working collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples'.

As I noted in the *Social Justice Report 2005*, it has long been recognised that social inequalities are associated with health inequality. Without an address to the social determinants of Indigenous poorer health within the context of an overall plan to close the Indigenous health equality gap by 2030, lasting health equality is not likely to be achieved. This is particularly so in Indigenous Australia. As I reported back in 2005,

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72 Steering Committee for Indigenous Health Equality, *Submission to the National Health and Hospital Reform Commission* (18 August 2008).

73 National Aboriginal Community Controlled Health Organisation, *Development of a New Architecture for the Delivery of Aboriginal and Torres Strait Islander Health*, Fact Sheet No. 1: Background of the project, NACCHO, Canberra, 2008.

74 National Aboriginal Community Controlled Health Organisation, *A new beginning: The problem with business as usual*, NACCHO, Canberra, October 2008; National Community Controlled Health Organisation, *A new Beginning: Charting a better way*, NACCHO, Canberra, October 2008.

75 National Aboriginal Community Controlled Health Organisation, *Development of a New Architecture for the Delivery of Aboriginal and Torres Strait Islander Health*, Fact Sheet No. 2: outcomes of the first think tank, NACCHO, Canberra, 2008.

Aboriginal and Torres Strait Islander communities have been characterised as *the* prime example of negative social determinants of health in Australia.<sup>76</sup>

Over 2009, the Steering Committee for Indigenous Health Equality will oversee the development of social and cultural determinants targets, with the help of a range of experts, to complete the *National Indigenous Health Equality Targets*. In turn it is hoped that the complete set of targets will provide a foundation for national planning towards Indigenous health equality.

The social determinants of health include the commonly accepted ones, including employment, education, income, community safety, and also overlaps with what is called health infrastructure: secure and accessible healthy food supplies, housing for health and health-enhancing community infrastructure.

Uniquely, the Steering Committee is also developing *cultural* determinants of health that will reflect the importance of strong and thriving cultures to the health, notably the mental health, of Indigenous Australians.

Once these targets have been developed, they will provide a foundation for the Steering Committee to actively engage with sectors beyond the health sector, and with responsibilities in relation to the social and cultural determinants of Indigenous health.

This will provide a challenge both for the Steering Committee, and, we anticipate, for those government sectors that have not traditionally seen themselves as having health responsibilities.

As noted earlier, COAG has also agreed to changes to the *Overcoming Indigenous Disadvantage* (OID) framework to link these to the six Close the Gap targets that have been adopted by COAG. A goal of these indicators is to be able to measure the total impact of government activity on Indigenous disadvantage, including Indigenous health, and thereby discouraging a 'siloed' approach from any given sector.

This remains an outstanding challenge for Australian governments, first noted in the *National Aboriginal Health Strategy* of 1989. The linking of the targets to the OID indicators may help stimulate a lasting change in government culture that facilitates a national effort to improve the social and cultural determinants of poorer Indigenous health from all sectors, as part of a wider national plan to achieve Indigenous health equality by 2030.

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76 Steering Committee for Indigenous Health Equality, *Submission to the National Health and Hospital Reform Commission* (18 August 2008) p 12.

## Part 4: Conclusion

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The Close the Gap Campaign and the closing the gap commitments of all Australian governments have the potential to be a turning point in Indigenous affairs in Australia. They do not simply involve rhetorical commitments. Already, we have seen substantial investments and the beginning of health system reforms to back them up. They have elevated the urgency of dealing with the Indigenous health crisis to a national priority and one that shares bipartisan support.

The groundwork has now been laid to make inroads into this longstanding issue. It is, however, a task that will take a generation. And there remains significant work to be done. This includes:

- the creation of a new partnership between Indigenous Australians and their representatives and Australian governments to underpin the national effort to achieve Indigenous health equality;
- the development of an appropriately funded, long-term national plan of action to achieve Indigenous health equality, in part to coordinate the many different streams of activity underway that have the potential to contribute to that end; and
- the establishment of adequate mechanisms to coordinate and monitor the multiple service delivery roles of governments that impact on Indigenous health, and to monitor progress towards the achievement of Indigenous health equality.

It is vital that these elements are put into place as soon as possible if we are to achieve Indigenous health equality by 2030. There is no room for complacency. Indigenous peoples' health continues to be significantly poorer on average than non-Indigenous Australians.

In concluding, I recall the words with which I launched the Close the Gap Campaign at the Sydney Olympic Stadium on 4 April 2007:

Let's stop being disappointed at our lack of achievement on Indigenous health and dare to dream about a positive future for all Australians.

To do so is not a pipedream. For we know that overcoming Indigenous inequality in health status is achievable...

Our primary message is not to simply scream 'crisis'. Our message, and our goal, is to champion hope and to focus on solutions. This crisis is not insurmountable. We can triumph.

We are making steps, but they are too slow and not broadly focused enough.

It will require additional funds, although this alone is not the solution.

It will also require a focus on the social determinants of health – living conditions, overcrowding in housing, education and employment. This is not just a health sector responsibility. This requires a whole-of-government, cross departmental approach...

And make no mistake, genuine progress requires genuine partnerships – between governments, Indigenous organizations, the corporate and philanthropic sectors and the broader community.

Let us work together to commit to a timeframe for action to address this health crisis.

We implore governments to be true to their words in addressing this critical issue.

And we beseech all members of the Australian community to join with us, to show us your support and let governments know in no uncertain terms that the time for action and progress has arrived to address this crisis.

That time is now.

# Appendix 1

## Chronology of events relating to the administration of Indigenous affairs, 1 July 2007 – 30 June 2008

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Date	Event/summary of issue
<p><b>1 July 2007</b> <i>The Corporations (Aboriginal and Torres Strait Islander) Act 2006 commenced.</i></p>	<p>The <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (the CATSI Act) was passed by the Australian Parliament in October 2006. It began on 1 July 2007, replacing the <i>Aboriginal Councils and Associations Act 1976</i>.</p> <p>Under the CATSI Act, laws governing Indigenous corporations have been modernised while still retaining the special measures to meet the specific needs of Indigenous peoples.<sup>1</sup></p>
<p><b>8 August 2007</b> <i>International Day of the World's Indigenous People 2007.</i></p>	<p>On 23 December 1994, the United Nations General Assembly decided that the International Day of the World's Indigenous People shall be observed on 9 August every year during the International Decade of the World's Indigenous People (resolution 49/214).</p> <p>Through the resolution that proclaimed the Second International Decade of the World's Indigenous People (2005–2014) (resolution 59/174 20 December 2004), the General Assembly also decided to continue observing the International Day of Indigenous People every year during the Second Decade.<sup>2</sup></p>

1 Office of the Registrar of Indigenous Corporations, *About the CATSI Act*, <http://www.oric.gov.au/Content.aspx?content=CATSI-Act/default.htm&menu=catsi&class=catsi&selected=About%20the%20CATSI%20Act> (viewed 13 January 2009).

2 UN Web Services Section, United Nations Department of Public Information, *International Day of the World's Indigenous People*, <http://www.un.org/events/indigenous/2007/> (viewed 15 January 2009).

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Date	Event/summary of issue
<p><b>13 August 2007</b> <i>Report on the Inquiry into Indigenous Employment tabled in Parliament.</i></p>	<p>The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs tabled its report of the inquiry into Indigenous Employment entitled <i>Indigenous Australians at Work: Successful initiatives in Indigenous employment</i>.</p> <p>The report contains 14 recommendations covering:</p> <ul style="list-style-type: none"> <li>▪ construction and maintenance programs;</li> <li>▪ tender requirements;</li> <li>▪ Indigenous employment by small business;</li> <li>▪ micro-finance;</li> <li>▪ funding for mentors;</li> <li>▪ education;</li> <li>▪ national Indigenous cadet scheme;</li> <li>▪ work experience;</li> <li>▪ public servants in regional and remote areas; and</li> <li>▪ private sector Indigenous employment.<sup>3</sup></li> </ul>
<p><b>17 August 2007</b> <i>Northern Territory Emergency Response legislation passes through Parliament.</i></p>	<p>The following Bills (Commonwealth) passed through the Australian Parliament:</p> <ul style="list-style-type: none"> <li>▪ Appropriation (Northern Territory National Emergency Response) (No. 1) 2007 – 2008;</li> <li>▪ Appropriation (Northern Territory National Emergency Response) (No. 2) 2007 – 2008;</li> <li>▪ Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) 2007;</li> <li>▪ Northern Territory National Emergency Response 2007; and</li> <li>▪ Social Security and Other Legislation Amendment (Welfare Payment Reform) 2007.</li> </ul> <p>This Commonwealth legislation facilitated the Australian Government's Northern Territory Emergency Response (NTER) to child sexual abuse in the Northern Territory (NT).<sup>4</sup></p> <p>It also amended existing welfare legislation to provide new welfare quarantining measures aimed at addressing child neglect and encouraging school attendance in the Northern Territory as well as in other states.<sup>5</sup></p>

3 House Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Indigenous Australians at Work: Successful initiatives in Indigenous employment* (2007). At <http://www.aph.gov.au/house/committee/atsia/indigenousemployment/report.htm> (viewed 15 January 2009).

4 Department of Families, Housing, Community Services and Indigenous Affairs, *Status of Legislation*. At [http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/legislation\\_status.htm](http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/legislation_status.htm) (viewed 1 July 2008).

5 For an overview of the Northern Territory Emergency Response measures and an analysis of their compliance with human rights principles see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2007) ch 3.

Date	Event/summary of issue
<p><b>21 August 2007</b> <i>The Community Development Employment Program (CDEP) in the Northern Territory will be abolished from September 2007.</i></p>	<p>The Australian Government announced that as part of the Northern Territory Emergency Response the Community Development Employment Program (CDEP) in the Northern Territory would progressively be abolished on a community by community basis, and would be replaced with 'real jobs, training and mainstream employment programs' from September 2007.<sup>6</sup></p> <p>The government announced that CDEP participants would be moved onto income support to enable a single system of quarantining to apply to welfare payments. The government stated that its aims were to stem the flow of cash going towards alcohol and substance abuse, and ensure that money meant for children's welfare was used for that purpose.</p>
<p><b>28 August 2007</b> <i>The Australian Government provides \$14.6 million for Indigenous environmental projects.</i></p>	<p>The Minister for the Environment and Water Resources announced that the Australian Government will provide \$14.6 million over three years to 10 Indigenous projects delivering environmental services in remote and regional Australia.</p> <p>This was the first payment of a four-year \$47 million <i>Working on Country</i> programme announced in the Budget to create paid jobs for Indigenous peoples looking after country. Under these initial contracts, Indigenous Australians will work on priority environmental projects for the Australian Government.<sup>7</sup></p>
<p><b>29 August 2007</b> <i>Australian Red Cross joins Corporate Leaders for Indigenous Employment Project.</i></p>	<p>The Australian Red Cross today joined the <i>Corporate Leaders for Indigenous Employment</i> after signing a Memorandum of Understanding (MoU) with the Australian Government.</p> <p>The Australian Red Cross joined 80 of Australia's other business leaders who have committed to the <i>Corporate Leaders for Indigenous Employment Project</i>.<sup>8</sup></p>

6 Employment & Workplace Relations Services for Australians, *CDEP in the Northern Territory Emergency Response Questions and Answers*, <http://www.workplace.gov.au/NR/rdonlyres/31071644-F73A-46BF-82D2-59046CF5057D/0/CDEPNTQuestionsandAnswers.pdf> (viewed 15 January 2008).

7 Minister for the Environment and Water Resources, '\$14.6 million for Indigenous environmental projects' (Media Release, 28 August 2007). At <http://www.scacc.com.au/UserFiles/File/Indigneous%20Env%20Projects.pdf> (viewed 15 January 2009).

8 Australian Red Cross, 'Australian Red Cross joins corporate leaders for indigenous employment' (Media Release, 29 August 2007). At <http://1.redcross.org.au/?fuseaction=NEWSROOM.archive&sub=507> (viewed 15 January 2009).

Date	Event/summary of issue
<p><b>30 August 2007</b> <i>Historic agreement for 99 year lease in Northern Territory.</i></p>	<p>A 99-year lease agreement over Nguuu in the Tiwi Islands was agreed to by the Tiwi Land Trust (on behalf of traditional owners of Nguuu) and the Executive Director of Township Leasing (on behalf of the Commonwealth Government). It followed a Memorandum of Understanding between the parties in May 2007.</p> <p>The lease was granted under s 19A of the <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i>. The section was part of an amendment to the Act introduced in August 2006. The term of the head lease is 99 years, to run until August 2106.</p> <p>Under the terms of the head lease, the Executive Director of Township Leasing also has the power to grant sub-leases. Under this Agreement the Australian Government agreed to provide:</p> <ul style="list-style-type: none"> <li>▪ \$5 million to cover the first 15 years of the lease;</li> <li>▪ \$1 million for health initiatives;</li> <li>▪ construction of 25 new houses within the next two years; and</li> <li>▪ the repair and maintenance of existing houses.<sup>9</sup></li> </ul>
<p><b>31 August 2007</b> <i>Official opening of the Australian Crime Commission Darwin office.</i></p>	<p>The Minister for Justice and Customs officially opened the Darwin office of the Australian Crime Commission (ACC). The new office was established in response to an expansion of the ACC's national criminal intelligence role in the Northern Territory, including the ACC Board approved National Indigenous Violence and Child Abuse Intelligence Task Force.<sup>10</sup></p>
<p><b>31 August 2007</b> <i>\$50 Million Investment for Indigenous boarding school facilities.</i></p>	<p>The Australian Government announced a \$50 million boost to enhance and expand accommodation for Indigenous students.</p> <p>The Minister for Education, Science and Training announced state specific funding for non-government boarding schools as part of the Indigenous Boarding Infrastructure Programme.<sup>11</sup></p>

9 Agreements, Treaties and Negotiated Settlements, *Nguuu (Tiwi Islands) 99-Year Lease*. At <http://www.atns.net.au/agreement.asp?EntityID=4116> (viewed 15 January 2009).

10 Minister for Justice and Customs, 'Official opening of the Australian Crime Commission Darwin office' (Media Release, 31 August 2007). At [http://www.crimecommission.gov.au/html/pg\\_media\\_minister\\_JC.html](http://www.crimecommission.gov.au/html/pg_media_minister_JC.html) (viewed 1 August 2008).

11 Minister for Education, Science and Training, '\$50 Million Investment for Indigenous Boarding School Facilities' (Media Release, 31 August 2007). At <http://www.dest.gov.au/ministers/media/bishop/2007/08/b001310807.asp> (viewed 15 January 2009).

Date	Event/summary of issue
<p><b>4 September 2007</b> <i>Training for Indigenous women through Shared Responsibility Agreement.</i></p>	<p>A Shared Responsibility Agreement was signed between the Australian Government and the Women's Karadi Aboriginal Corporation to enable Indigenous women in Tasmania to receive new training and skills to help prepare them to enter the workforce.</p> <p>The Return to Work program will aim to ensure that Indigenous women who have never been employed or are re-entering the workforce will gain the required skills and confidence to undertake paid employment. The Australian Government has invested \$64,000 to purchase ten laptop computers and provide pre-employment training for the women.</p> <p>Karadi is a long established women's organisation with strong links to the broader community. It will nominate women to attend the course, provide a venue for the training and provide ongoing support for the women in their transition to the workforce.<sup>12</sup></p>
<p><b>6 September 2007</b> <i>Funding to improve telecommunications in remote Indigenous communities.</i></p>	<p>The Minister for Communications, Information Technology and the Arts announced 35 projects totalling \$1.9 million under the \$36.6 million <i>Backing Indigenous Ability</i> telecommunications program. The projects will assist more than 130 remote Indigenous communities around Australia, like Warburton in Western Australia, Milingimbi in the Northern Territory and Boigu Island in the Torres Strait.</p> <p>An important aim of the program is to enable communities to develop cultural and social online content in their own language.</p> <p>The program will also support a range of training, from the most basic to nationally accredited courses, in 29 remote Indigenous communities across Australia.</p> <p>The <i>Backing Indigenous Ability</i> telecommunications program provides assistance with internet access, videoconferencing, IT training and skills development and Indigenous online content development. Applicants were able to apply for one or more of the different program elements depending upon the needs of their communities.<sup>13</sup></p>

12 Minister for Community Services and Minister for Employment and Workplace Relations, 'Boost to training for Indigenous women' (Media Release, 4 September 2007). At [http://www.familyassist.gov.au/internet/Minister5.nsf/content/indigenous\\_women\\_4sep07.htm](http://www.familyassist.gov.au/internet/Minister5.nsf/content/indigenous_women_4sep07.htm), (viewed 15 January 2009).

13 Minister for Communications, Information Technology and the Arts, 'Funding to improve telecommunications in remote Indigenous communities' (Media Release, 6 September 2007). At [http://www.minister.dcita.gov.au/coonan/media/media\\_releases/funding\\_to\\_improve\\_telecommunications\\_in\\_remote\\_indigenous\\_communities?SQ\\_DESIGN\\_NAME=printer\\_friendly](http://www.minister.dcita.gov.au/coonan/media/media_releases/funding_to_improve_telecommunications_in_remote_indigenous_communities?SQ_DESIGN_NAME=printer_friendly) (viewed 15 January 2009).

Date	Event/summary of issue
<p><b>10 September 2007</b>  <i>Release of the report of the Parliamentary Inquiry into the Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007.</i></p>	<p>The Senate Standing Committee on Employment, Workplace Relations and Education released its final report on the Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007 in which it recommended the Bill be passed. The Bill passed into law on 28 September 2007.</p> <p>The purpose of the law is to appropriate an additional \$2 million over the 2008 program year to support the expansion of Making Up for Lost Time in Literacy (MULTILIT) and the Student Education Trusts in the communities of Coen, Hope Vale, Aurukun and Mossman Gorge in the Cape York region of Queensland.</p> <p>The additional funding will be used by the Cape York Institute for Policy and Leadership (the Institute) to support the expansion of the MULTILIT accelerated literacy program and Student Education Trusts. These measures will provide approximately 800 indigenous students with additional support.</p> <p>Additional funding of \$8.1 million has also been approved for the years 2009–2012 and will be appropriated through subsequent legislation for the 2009–2012 Indigenous Education Quadrennium.<sup>14</sup></p>
<p><b>13 September 2007</b>  <i>United Nations adopts Declaration on the Rights of Indigenous Peoples.</i></p>	<p>The <i>United Nations Declaration on the Rights of Indigenous Peoples</i> was adopted by the United Nations General Assembly by an overwhelming majority. 143 Member States voted in favour, 11 abstained and four States – Australia, Canada, New Zealand and the United States – voted against the text.</p> <p>A non-binding text, the Declaration sets out the individual and collective rights of indigenous peoples, including their rights to culture, identity, language, employment, health, education and other issues.</p> <p>The Declaration emphasises the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations.</p> <p>It also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them, and their right to remain distinct and to pursue their own visions of economic and social development.</p>

14 Senate Employment, Workplace Relations and Education Committee, Parliament of Australia, *Report into Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007 [Provisions]* (2007). At [http://www.aph.gov.au/Senate/committee/eet\\_ctte/completed\\_inquiries/2004-07/indigenoused07/report/index.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/2004-07/indigenoused07/report/index.htm) (viewed 15 January 2009).

Date	Event/summary of issue
	<p>The UN Permanent Forum on Indigenous Issues estimates there are more than 370 million indigenous people in some 70 countries worldwide. Members of the Forum said earlier this year that the Declaration creates no new rights and does not place indigenous peoples in a special category.<sup>15</sup></p>
<p><b>14 September 2007</b> <i>Northern Territory National Emergency Response Amendment (Alcohol) Act 2007 (Cth) passes.</i></p>	<p>The <i>Northern Territory National Emergency Response Amendment (Alcohol) Act 2007 (Cth)</i> passed into law. The law made amendments to consolidate the alcohol measures in the <i>Northern Territory Emergency Response Act 2007</i>. The amendments:</p> <ul style="list-style-type: none"> <li>▪ change the 1,350ml trigger for seeking and recording details for takeaway alcohol sales to reduce the complexity of the provision;</li> <li>▪ make changes to clarify the storage of records of takeaway purchases;</li> <li>▪ provide certain exceptions to the alcohol offences in relation to tourism operations in parks and other areas if declared;</li> <li>▪ provide for the alcohol measures to be determined not to apply in a particular area if warranted, for example, where comprehensive and effective local management measures are implemented; and</li> <li>▪ make clear that no past or future Northern Territory legislation undermines the emergency response alcohol measures.<sup>16</sup></li> </ul>
<p><b>15 September 2007</b> <i>New alcohol restrictions to take effect in the Northern Territory.</i></p>	<p>Alcohol bans came into effect in the Northern Territory as part of the Australian Government's Emergency response to child abuse in Aboriginal communities.</p> <p>The Minister for Families, Community Services and Indigenous Affairs explained that alcohol is banned on Aboriginal land and community living areas, in all town camps and other areas.</p> <p>There will be penalties for anyone possessing, transporting or drinking alcohol in these areas, and heavier penalties if people are found to be running alcohol into these places and anyone who buys larger amounts of take away alcohol will need to show identification and have their details recorded. This will involve purchases of \$100 or more, or if more than five litres of cask or flagon wine is purchased.</p>

15 UN News Centre, 'United Nations adopts Declaration on Rights of Indigenous Peoples' (Media Release, 13 September 2007). At <http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1> (viewed 15 January 2008).

16 Explanatory Memorandum, Northern Territory National Emergency Response Amendment (Alcohol) Bill 2007 (Cth). At <http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/ems/Linked/11090707.pdf> (viewed 19 January 2009).

Date	Event/summary of issue
	<p>Tourism operators in National Parks will be able to continue to offer responsible alcohol consumption as part of their usual tourism activity. Special arrangements will be put in place at Uluru.<sup>17</sup></p>
<p><b>18 September 2007</b> <i>Funding for major Indigenous housing projects announced.</i></p>	<p>The Minister for Indigenous Affairs announced a further \$514 million in funding for Indigenous housing, accommodation and related services in the Northern Territory. This commitment is on top of the \$279 million in funding already allocated to the Northern Territory by the Australian Government for Indigenous housing and related services.</p> <p>Funds will be used to repair and upgrade existing houses, and to construct new houses, as well as creating training and employment opportunities for local Indigenous communities.</p> <p>The funding, under the new Australian Remote Indigenous Accommodation Programme for use in the Northern Territory over the next four years, forms a large part of the \$1.6 billion commitment by the Australian Government for the reform of Indigenous housing which was announced in the Budget.<sup>18</sup></p>
<p><b>18 September 2007</b> <i>Additional funding for Northern Territory emergency response measures.</i></p>	<p>The Australian Government announced that it will provide \$740 million in funding for several initiatives in 2007–08 and into future years, highlighting the Government’s long-term commitment to the Northern Territory Emergency Response.</p> <p>These measures support an agreement reached between the Australian and Northern Territory Governments on housing, health, jobs and education for Indigenous children and families in the NT.</p> <p>The new measures are:</p> <ul style="list-style-type: none"> <li>▪ \$18.5 million over two years from 2008–09 for 66 additional Australian Federal Police officers;</li> <li>▪ \$514 million (additional funding) to repair and build housing in remote communities over the next four years;</li> </ul>

17 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, ‘New alcohol restrictions to take effect in NT’ (Media Release, 10 September 2007). At [http://www.facsia.gov.au/internet/minister3.nsf/content/nter\\_alcohol\\_10sep07.htm](http://www.facsia.gov.au/internet/minister3.nsf/content/nter_alcohol_10sep07.htm) (viewed 15 January 2009).

18 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, ‘Funding for major Indigenous housing projects’ (Media Release, 18 September 2007). At [http://www.fahcsia.gov.au/internet/minister3.nsf/content/housing\\_18sep07.htm](http://www.fahcsia.gov.au/internet/minister3.nsf/content/housing_18sep07.htm) (viewed 15 January 2009).

Date	Event/summary of issue
	<ul style="list-style-type: none"> <li>▪ \$100 million over two years from 2008–09 for doctors, nurses, allied health professionals and specialist services;</li> <li>▪ \$78.2 million over three years to create jobs in Australian Government service delivery; and</li> <li>▪ up to \$30 million over three years to match on a dollar for dollar basis contributions by the NT Government to assist them to convert CDEP positions supporting NT and local government services into real jobs.</li> </ul> <p>The funding was provided on the basis that the NT Government agreed to certain conditions including a radical overhaul of the way it delivers Commonwealth funded housing programs. The NT Government will ensure that sufficient classrooms, equipment and teachers will be provided to cope with an anticipated increase in school enrolments and attendance as welfare reform measures are introduced.<sup>19</sup></p>
<p><b>19 September 2007</b> <i>\$11 million to be spent on Indigenous boarding school upgrades.</i></p>	<p>The Australian Government announced that Indigenous students across the Northern Territory and Queensland will benefit from more than \$11 million in boarding school upgrades.</p> <p>The funding will be divided between three boarding schools with longstanding requirements to repair, replace or expand their facilities to meet the needs of Indigenous students.</p> <p>The colleges will also provide transitional accommodation to support students from remote communities to adjust to boarding.<sup>20</sup></p>
<p><b>20 September 2007</b> <i>Galarrwuy Yunupingu secures agreement to negotiate 99 year lease on NT Aboriginal Land.</i></p>	<p>Galarrwuy Yunupingu secured an agreement to negotiate a 99 year lease on Northern Territory Aboriginal Land at the community of Gnyangara (Ski Beach) in North East Arnhem Land.</p> <p>A Memorandum of Understanding was signed between the Australian Government and Galarrwuy Yunupingu on behalf of the Gumatj clan.<sup>21</sup></p>

19 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Government delivers long-term commitment to housing jobs, health and police as part of long term commitment to NT' (Media Release, 18 September 2007). At [http://www.fahcsia.gov.au/internet/minister3.nsf/content/funding\\_18sep07.htm](http://www.fahcsia.gov.au/internet/minister3.nsf/content/funding_18sep07.htm) (viewed 15 January 2009).

20 Minister for Education, Science and Training, 'Indigenous Boarding School upgrades' (Media Release, 19 September 2007). At <http://www.dest.gov.au/ministers/media/bishop/2007/09/b002190907.asp> (viewed 15 January 2009).

21 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Land Rights pioneer secures agreement to negotiate 99 year lease' (Media Release, 20 September 2007). At [http://www.fahcsia.gov.au/internet/minister3.nsf/content/land\\_rights\\_20sep07.htm](http://www.fahcsia.gov.au/internet/minister3.nsf/content/land_rights_20sep07.htm) (viewed 15 January 2009).

Date	Event/summary of issue
<p><b>21 September 2007</b>  <i>Planning for Indigenous child care services.</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs launched the Australian Governments' Indigenous Child Care Services Plan at the Secretariat of National Aboriginal and Islander Child Care (SNAICC) conference in Adelaide.</p> <p>The primary focus of the Indigenous Child Care Services Plan is to increase the participation of Indigenous children and families in high quality, culturally responsive children's services, including child care.</p> <p>There is an accompanying summary document, <i>Towards an Indigenous Child Care Services Plan</i>, which was compiled following consultations about child care needs with Indigenous families and communities throughout Australia, which was also launched today.</p> <p>The findings contained in the summary document were used to inform the development of several measures announced in the 8 May 2007 Budget, including:</p> <ul style="list-style-type: none"> <li>▪ The Longitudinal Study of Indigenous Children – analysis of pathways of child development and impact of policy and program changes (\$8.9 million).</li> <li>▪ Expanding Playgroup Services – strengthen the delivery and effectiveness of Intensive Support Playgroups in high cost locations (\$13.8 million).</li> <li>▪ Improved Access to Early Childhood Services and Child Care – establish 20 new Innovative Child Care Services Hubs in regional and remote communities with high Indigenous populations (\$23.5 million).</li> </ul> <p>Other recent initiatives to assist Indigenous families' access child care were also informed by the findings of the consultations, including:</p> <ul style="list-style-type: none"> <li>▪ A 20 per cent increase in base funding to Budget Based Funded (BBF) child care services, including Multifunctional Aboriginal Children's Services (MACS), Mobile Child Care services, JET Creches, Indigenous Playgroups and some Outside School Hours Care (OSHC) services (to a total of \$45.5 million).</li> <li>▪ A one-off equipment grant of up to \$20,000 in addition to base funding for these BBF services.</li> <li>▪ Existing child care services will receive extra financial support to improve the quality of their services and access mainstream funding (\$23.5 million).<sup>22</sup></li> </ul>

22 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Focused Planning for Indigenous Child Care Services' (Media Release, 21 September 2007). At [http://www.facsia.gov.au/internet/minister3.nsf/content/focused\\_planning\\_21sep07.htm](http://www.facsia.gov.au/internet/minister3.nsf/content/focused_planning_21sep07.htm), (viewed 15 January 2009).

Date	Event/summary of issue
<p><b>24 September 2007</b> <i>National Indigenous Council (NIC) Report released.</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs received the latest report from the National Indigenous Council on its activities and achievements from January – June 2007.<sup>23</sup></p> <p>In 2007 the Council prepared two policy papers: <i>Enhancing Indigenous Economic Independence; and Accessing Services in My Community (Mainstreaming)</i>.</p>
<p><b>25 September 2007</b> <i>More than \$1 million awarded to Indigenous Australians for research.</i></p>	<p>The Australian Government announced that Indigenous Australian researchers from five universities will share in \$1.12 million over three years to undertake projects in areas such as Indigenous education, violence prevention, climate change and reconciliation through sport, under the Australian Government's Discovery Indigenous Researchers Development scheme.<sup>24</sup></p>
<p><b>26 September 2007</b> <i>Australian Government funding for Indigenous communities in north west Western Australia.</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs announced a multi million dollar package of assistance in response to the reported incidence of child abuse in Indigenous communities in far north Western Australia.</p> <p>This package is in addition to \$20 million provided to the WA Government for three multifunction police facilities (at Burringurah, Looma and Wingellina) and for police accommodation at Bidyadanga.</p> <p>The key elements of the package are:</p> <ul style="list-style-type: none"> <li>▪ \$7 million for a new Family Violence Service hub and outreach model which will deliver services including family violence counselling to women and children, early intervention and counselling for men and boys, referral services and outreach workers in communities;</li> <li>▪ Additional health checks in the East Kimberley, focusing initially on Halls Creek;</li> <li>▪ \$857,000 to Warmun, Balgo and Kalumburu to run programs to educate communities on appropriate behaviours, and to support community safety and responsibility;</li> <li>▪ \$808,000 for early childhood education services, and improved antenatal and postnatal health programs; and</li> </ul>

23 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Minister Receives NIC Report' (Media Release, 24 September 2007). At [http://www.facsia.gov.au/internet/minister3.nsf/content/nic\\_report\\_24sep07.htm](http://www.facsia.gov.au/internet/minister3.nsf/content/nic_report_24sep07.htm) (viewed 15 January 2009).

24 Minister for Education, Science and Training, 'More than \$1 million awarded to Indigenous Australians for research' (Media Release, 25 September 2007). At <http://www.dest.gov.au/ministers/media/bishop/2007/09/b003250907.asp> (viewed 15 January 2009).

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Date	Event/summary of issue
	<ul style="list-style-type: none"> <li>▪ Up to \$1 million, in addition to a WA Government contribution, for a new Innovative Child Care Services Hub at Halls Creek.<sup>25</sup></li> </ul>
<p><b>26 September 2007</b> <i>New remote police stations in Western Australia.</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs announced a \$20 million agreement to build new police facilities in four Indigenous communities across Western Australia.</p> <p>The Australian Government had previously contributed \$1.9 million towards the construction of police multifunction centres and police accommodation in Western Australia, including contributing to police facilities in the Kimberley at Balgo, Warmun, Kalumburu and Jigalong in the Pilbara.<sup>26</sup></p>
<p><b>1 October 2007</b> <i>Housing and Welfare Reform Agreement for Yarrabah, QLD.</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs signed an agreement with the Mayor of Yarrabah Aboriginal Shire Council, and the Chair of the Yarrabah Community Justice Group, to provide \$14 million to the north Queensland Indigenous community for new housing and welfare reform measures.</p> <p>The key elements of the agreement are:</p> <ul style="list-style-type: none"> <li>▪ A commitment to long term welfare reform in Yarrabah;</li> <li>▪ Housing upgrades to be provided to people who move to normal public housing tenancy arrangements, pay market rent, uphold tenancy conditions and look after their houses;</li> <li>▪ Families who commit to an income management scheme for payment of rent and general day to day management of income, and make sure their children attend school will be eligible for additional housing upgrades; and</li> </ul>

25 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Multi-million Australian Government funding package for Indigenous communities in North West WA' (Media Release, 26 September 2007). At [http://www.ofw.facsia.gov.au/internet/minister3.nsf/content/funding\\_package\\_26.htm](http://www.ofw.facsia.gov.au/internet/minister3.nsf/content/funding_package_26.htm) (viewed 15 January 2009).

26 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'New remote police stations in Western Australia' (Media Release, 26 September 2007). At [http://www.facsia.gov.au/internet/minister3.nsf/content/remote\\_police\\_26sep07.htm](http://www.facsia.gov.au/internet/minister3.nsf/content/remote_police_26sep07.htm) (viewed 15 January 2009).

Date	Event/summary of issue
	<ul style="list-style-type: none"> <li>▪ Once the Queensland Government legislates land tenure changes to allow for private home ownership, funding will be provided for new housing for home ownership within the community, with 40 new blocks to be developed. New houses are to be built on 20 of those blocks for rent and then purchase by residents, and the other 20 blocks available for sale for people to build their own homes.<sup>27</sup></li> </ul>
<p><b>8 October 2007</b> <i>\$2.3 million for Indigenous environment projects.</i></p>	<p>The Australian Government announced that \$2.3 million funding would be committed to Indigenous <i>Working on Country</i> contracts. Some of the activities funded through the contracts include combating weeds of national significance, improving habitat for threatened and endangered flora, reducing soil and water salinity and protecting important Aboriginal art sites.<sup>28</sup></p> <p>More information on the <i>Working on Country</i> programme is available online at: <a href="http://www.environment.gov.au/indigenous/workingoncountry/index.html">http://www.environment.gov.au/indigenous/workingoncountry/index.html</a></p>
<p><b>10 October 2007</b> <i>Scitech to enhance Indigenous students' learning opportunities.</i></p>	<p>The Minister for Education, Science and Training announced a \$350,000 science education program to support the work of Scitech Outreach programs with Indigenous students.<sup>29</sup> The funding will assist children in remote Aboriginal communities to participate in the Western Australian resources boom through enhanced learning opportunities.</p>
<p><b>11 October 2007</b> <i>Housing and Welfare Reform Agreement for Palm Island.</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs announced \$14 million for a new housing and welfare strategy for Queensland's Indigenous community of Palm Island.</p> <p>The agreement is similar to the Hope Vale and the Yarrabah agreements signed in 2007.</p> <p>The key elements of the agreement are:</p> <ul style="list-style-type: none"> <li>▪ a commitment to long term welfare reform;</li> </ul>

27 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Landmark Housing and Welfare Reform Agreement for Yarrabah' (Media Release, 1 October 2007). At [http://www.facsia.gov.au/internet/minister3.nsf/content/yarrabah\\_01oct07.htm](http://www.facsia.gov.au/internet/minister3.nsf/content/yarrabah_01oct07.htm) (viewed 15 January 2009).

28 Minister for the Environment and Water Resources, '\$2.3m boost for Indigenous Environment Projects' (Media Release, 8 October 2007). At <http://indigenous.developmentgateway.org/News.10971+M5c9315d5ac2.0.html> (viewed 15 January 2009).

29 Minister for Education, Science and Training, 'Scitech enhances indigenous students learning opportunities' (Media Release, 10 October 2007). At <http://www.dest.gov.au/ministers/media/bishop/2007/10/b003101007.asp> (viewed 15 January 2009).

Date	Event/summary of issue
	<ul style="list-style-type: none"> <li>▪ normal public housing tenancy arrangements, including market rent for housing and stronger tenancy conditions;</li> <li>▪ families who commit to an income management scheme for payment of rent and general day to day management of income, and make sure their children attend school, will be eligible for housing upgrades, and;</li> <li>▪ up to 20 new homes will be built and a new 40 lot subdivision developed.<sup>30</sup></li> </ul>
<p><b>18 October 2007</b>  <i>New Indigenous housing report released by the Australian Institute of Health and Welfare.</i></p>	<p>A new report released by the Australian Institute of Health and Welfare shows that Indigenous home ownership is increasing, and other areas of Indigenous housing are also showing improvement.</p> <p>Areas of concern that remain include:</p> <ul style="list-style-type: none"> <li>▪ Over one third households in Indigenous Community Housing were overcrowded in 2006.</li> <li>▪ 51 dwellings in Indigenous communities had no organised sewerage system and 85 had no organised electricity supply.</li> <li>▪ In addition, 30% (6,674) of Indigenous Community Housing dwellings were in poor condition.</li> </ul> <p>The report also highlights increased access to social housing. The proportion of Indigenous households in public housing increased from 5.9% to 6.3%, and the proportion of Indigenous households in receipt of Commonwealth Rent Assistance increased from 2.4% to 3.2%.</p> <p>Since 2001 the number of Indigenous housing organisations has fallen from about 600 to just fewer than 500 in 2006, partly due to rationalisations.</p> <p>There were 166,671 Indigenous households in 2006, representing 2.3% of all Australian households.<sup>31</sup></p>
<p><b>19 October 2007</b>  <i>Indigenous Education (Targeted Assistance) Amendment Regulations 2007 (No. 1) come into effect.</i></p>	<p>The Indigenous Education (Targeted Assistance) Amendment Regulations 2007 (No. 1) (Cth) make provision for an increase in the amounts that may be payable to organisations, institutions and individuals under section 14A of the <i>Indigenous Education (Targeted Assistance) Act 2000</i> (Cth) in order to supplement the cost of delivering educational services to Indigenous students for the period 1 January 2007 to 30 June 2009.</p>

30 Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'Howard Government backs Palm Island reforms' (Media Release, 11 October 2007). At [http://www.facsia.gov.au/internet/minister3.nsf/content/palm\\_island\\_11oct07.htm](http://www.facsia.gov.au/internet/minister3.nsf/content/palm_island_11oct07.htm) (viewed 15 January 2009).

31 Australian Institute of Health and Welfare, 'Improvements seen in Indigenous housing but areas of concern remain' (Media Release, 18 October 2007). At <http://www.aihw.gov.au/mediacentre/2007/mr20071018.cfm> (viewed 16 January 2009).

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	The Regulations are available online at: <a href="http://www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/F078EA56E517A175CA25737800018159/\$file/0717525A071005EV.pdf">http://www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/F078EA56E517A175CA25737800018159/\$file/0717525A071005EV.pdf</a> .
<b>24 November 2007</b> <i>Change of Australian Government.</i>	The Australian Labor Party won the Federal election with a national swing of 5.7%. Kevin Rudd is the new Prime Minister of Australia.
<b>29 November 2007</b> <i>Prime Minister announces the new Cabinet and Ministry.</i>	The Prime Minister announced his new Ministry. Jenny Macklin is appointed as Minister for Families, Housing, Community Services and Indigenous Affairs. Robert McClelland is the Attorney-General. <sup>32</sup>
<b>14 December 2007</b> <i>Oral Health of Aboriginal and Torres Strait Islander Children – report by Australian Institute of Health and Welfare.</i>	The Australian Institute of Health and Welfare released the report <i>Oral Health of Aboriginal and Torres Strait Islander Children</i> which reported levels of dental decay have increased among Aboriginal and Torres Strait Islander children in recent years, particularly among those aged less than seven years. The report shows that poor dental health, including dental decay, is more common among Aboriginal and Torres Strait Islander children than other children, and that Indigenous children who are less well off and those in rural and remote areas are most affected. <sup>33</sup>
<b>20 December 2007</b> <i>Council of Australian Governments' Meeting.</i>	<p>The Council of Australian Governments (COAG) held its 20th meeting in Melbourne. In addition to the Prime Minister, Premiers, Chief Ministers and the President of the Australian Local Government Association (ALGA), Commonwealth and State and Territory Treasurers also attended.</p> <p>COAG agreed to a new model of cooperation underpinned by more effective working arrangements. COAG identified seven areas for its 2008 work agenda:</p> <ul style="list-style-type: none"> <li>▪ Health and Ageing;</li> <li>▪ Productivity Agenda – including education, skills, training and early childhood;</li> <li>▪ Climate Change and Water;</li> <li>▪ Infrastructure;</li> <li>▪ Business Regulation and Competition;</li> </ul>

32 Prime Minister, *Announcement of Cabinet and Ministry* (Press Conference, 29 November 2007). At <http://www.alp.org.au/media/1107/pcpme290.php> (viewed 16 January 2009).

33 Australian Institute of Health and Welfare, 'Dental health of Indigenous children worsens' (Media Release, 14 December 2007). At <http://www.aihw.gov.au/mediacentre/2007/mr20071214.cfm> (viewed 16 January 2009).

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	<ul style="list-style-type: none"> <li>▪ Housing; and</li> <li>▪ Indigenous Reform.</li> </ul> <p>COAG established seven working groups each overseen by a Commonwealth Minister. COAG also agreed to the terms of reference for each of the groups.</p> <p>To drive reforms, COAG agreed that it would meet four times in 2008.</p> <p>COAG also agreed the 17 year gap in life expectancy between Indigenous and non-Indigenous Australians must be closed.</p> <p>COAG agreed to a partnership between all levels of government to work with Indigenous communities to achieve the target of closing the gap on Indigenous disadvantage. COAG committed to:</p> <ul style="list-style-type: none"> <li>▪ closing the life expectancy gap within a generation;</li> <li>▪ halving the mortality gap for children under five within a decade; and</li> <li>▪ halving the gap in reading, writing and numeracy within a decade.<sup>34</sup></li> </ul>
<p><b>31 December 2007</b> <i>National Indigenous Council's term ends</i></p>	<p>The National Indigenous Council's term expired on 31 December 2007.</p> <p>On 15 January 2008, the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, announced the government's decision not to continue the National Indigenous Council. The Minister explained that the government would undertake discussions with Indigenous peoples about the best process to develop a new representative body.<sup>35</sup></p>
<p><b>20 January 2008</b> <i>First Community Cabinet Meeting held in Canning Vale, Western Australia</i></p>	<p>The Australian Government held its first Community Cabinet meeting in Canning Vale in Western Australia.</p> <p>Community Cabinet meetings provide an opportunity for community members to put forward their ideas on local and national issues. Four more Community Cabinet meetings are planned before the end of July 2008:</p> <ul style="list-style-type: none"> <li>▪ Narangba, QLD – 2 March 2008;</li> <li>▪ Penrith, NSW – 15 April 2008;</li> <li>▪ Mackay, QLD – 29 June 2008; and</li> <li>▪ Yirrkala, NT – 26 July 2008.</li> </ul>

34 Council of Australian Governments, *Communique – 20 December 2007*. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-12-20/coag20071220.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/coag20071220.pdf) (viewed 16 January 2009).

35 Minister for Families, Housing, Communities and Indigenous Affairs, 'National Indigenous Council' (Media Release, 15 January 2008). At [http://www.facs.gov.au/Internet/jennymacklin.nsf/content/nic\\_14jan08.htm](http://www.facs.gov.au/Internet/jennymacklin.nsf/content/nic_14jan08.htm) (viewed 16 January 2009).

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	<p>Issues raised at Canning Vale included the housing affordability crisis, human rights in China, the plight of Indigenous Australians, funding for state schools and the difficulties faced by Australians who rely on the aged pension.<sup>36</sup></p>
<p><b>31 January 2008</b> <i>Indigenous land use agreement signed over Ipswich.</i></p>	<p>Native title claimants the Jagera, Yuggera and Ugarapul people, and the Ipswich City Council signed an Indigenous land use agreement that took two years to negotiate. The agreement deals with future infrastructure development, cultural heritage issues and community relations.</p> <p>The entire Ipswich City Council region is covered by the group's native title claim. The groups signed a memorandum of understanding in November 2006 that set out the framework for the ILUA negotiations.<sup>37</sup></p>
<p><b>31 January 2008</b> <i>The Steering Committee for the Review of Government Service Provisions released the thirteenth edition of the Report on Government Services.</i></p>	<p>The Steering Committee for the Review of Government Service Provisions released the thirteenth edition of the <i>Report on Government Services</i>. The Report examines the performance of all Australian governments providing education, justice, emergency management, health, community services and housing services. The services account for \$120 billion in government expenditure – almost 13 per cent of Australia's gross domestic product.</p> <p>The report found a dramatic gap in education and health outcomes for Indigenous communities compared to the rest of the population.</p> <p>The report shows that where people live dictates their level of numeracy and literacy skills, with marked differences between city and remote areas. Those worst-affected are Indigenous students in remote areas, where only 27 per cent reach the year seven benchmark for reading.</p> <p>In health, the mortality rate for Indigenous peoples is twice as high as that in the general population and the infant mortality rate is also markedly higher than the rest of the community. The Council of Australian Governments (COAG) has already indicated it is making these issues a priority.<sup>38</sup></p>

36 Department of the Prime Minister and Cabinet, *Canning Vale Community Cabinet Meeting*. At [http://www.pmc.gov.au/community\\_cabinet/meetings/canningvale.cfm](http://www.pmc.gov.au/community_cabinet/meetings/canningvale.cfm) (viewed 16 January 2009).

37 National Native Title Tribunal, 'Indigenous land use agreement signed over Ipswich' (Media Release, 30 January 2008). At <http://www.nntt.gov.au/News-and-Communications/Media-Releases/Pages/IndigenouslanduseagreementsignedoverIpswich.aspx> (viewed 16 January 2009).

38 Productivity Commission, 'Report on Government Services 2008' (Media Release, 31 January 2008) At <http://www.pc.gov.au/gsp/reports/rogs/2008/mediarelease> (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>1 February 2008</b>  <i>The 2006 National Reading, Writing and Numeracy Benchmark results released.</i></p>	<p>The Ministerial Council on Education, Employment, Training and Youth Affairs released the 2006 National Reading, Writing and Numeracy Benchmark results.</p> <p>The results showed that the majority of Australian students in Years 3, 5 and 7 achieved the minimum benchmark standards in reading, writing and numeracy. The levels of achievement amongst Indigenous students, literacy in boys, and students living in very remote regions, remains significantly lower than the overall standard.</p> <p>The results for Indigenous students in year 7 numeracy for instance showed that less than half, 48 per cent, met the benchmark in 2006.<sup>39</sup></p> <p>The 2006 national benchmark results report is available online at: <a href="http://www.mceetya.edu.au">http://www.mceetya.edu.au</a></p>
<p><b>13 February 2008</b>  <i>National Apology to Australia's Indigenous Peoples – Parliament House, Canberra.</i></p>	<p>On 13 February 2008, the Prime Minister of Australia, Kevin Rudd, on behalf of the Australian Parliament, gave the Apology to Australia's Indigenous Stolen Generations for the past government policies and practices of forcibly removing Indigenous children from their families.</p> <p>The full text of the speech is available online at: <a href="http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm">http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm</a></p> <p>More than 100 members of the Stolen Generations were invited to travel to Canberra as special guests of the Government to hear the National Apology.</p> <p>The Government also asked the leaders of the Stolen Generations Alliance and the National Sorry Day Committee to nominate Indigenous peoples who would best represent their fellow survivors at this historic day in the House of Representatives.</p> <p>An additional number of Stolen Generation representatives attended with the support of businesses and individual donations through Reconciliation Australia.</p> <p>Others among the invited guests included the widow of Sir Ronald Wilson, Lady Wilson, and Mick Dodson. Mr Dodson and Sir Ronald co-chaired the inquiry into the removal of Aboriginal and Torres Strait Islander children from their families which resulted in the <i>Bringing them home</i> report.<sup>40</sup></p>

39 Minister for Education, Employment and Workplace Relations and Social Inclusion, '2006 National Benchmark Results' (Media Release, 1 February 2008). At <http://mediacentre.dewr.gov.au/mediacentre/Gillard/Releases/2006NationalBenchmarkResults.htm> (viewed 16 January 2009).

40 Prime Minister and Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stolen Generations invited to Parliament for the National Apology' (Media Release, 10 February 2008). At [http://www.pm.gov.au/media/release/2008/media\\_release\\_0065.cfm](http://www.pm.gov.au/media/release/2008/media_release_0065.cfm) (viewed 16 January 2009).

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	<p>The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma was asked by the National Sorry Day Committee and the Stolen Generations Alliance, the two national bodies that represent the Stolen Generations and their families, to respond to the Parliament's Apology and to talk briefly about the importance of the event.</p> <p>In his response the Commissioner noted that through this one direct act, 'Parliament has acknowledged the existence and the impacts of the past policies and practices of forcibly removing Indigenous children from their families. And by doing so, has paid respect to the Stolen Generations. For their suffering and their loss. For their resilience. And ultimately, for their dignity'.<sup>41</sup></p>
<p><b>17 February 2008</b> <i>Permit system on Aboriginal land in Northern Territory.</i></p>	<p>The Minister for Families, Housing, Community Services and Indigenous Affairs announced that the permit system currently in place for use of major roads to communities in the Northern Territory will continue.</p> <p>For permits to be abolished the legislation requires the Minister to determine by regulation that access on major roads no longer requires a permit.</p> <p>In line with the Government's pre-election policy, the Minister will not be making this determination and permits will still be required to travel on almost all roads through Aboriginal land in the NT.</p> <p>Under the Northern Territory Emergency Response legislation, access to common areas of major communities is allowed without a permit from 17 February, 2008.<sup>42</sup></p>
<p><b>17 February 2008</b> <i>\$50 million allocated to fund programs for alcohol and substance abuse in Indigenous communities.</i></p>	<p>The Minister for Health and Ageing announced the allocation of \$50 million to reduce alcohol and substance abuse and its impact on families, safety and community wellbeing in remote Indigenous communities.</p> <p>The announcement marks the implementation of the Government's commitment at the December 2007 COAG meeting to commit \$50 million nationwide over four years for substance and alcohol rehabilitation and treatment services across Australia, particularly in remote areas.</p>

41 T Calma, *Let the healing begin – Response to government to the national apology to the Stolen Generations* (Speech delivered at the Australian Parliament, Canberra, 13 February 2008). At [http://humanrights.gov.au/about/media/speeches/social\\_justice/2008/20080213let\\_the\\_healing\\_begin.html](http://humanrights.gov.au/about/media/speeches/social_justice/2008/20080213let_the_healing_begin.html) (viewed 16 January 2009).

42 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Permit system on Aboriginal land in NT' (Media Release, 17 February 2008). At [http://www.jennymacklin.fahcscia.gov.au/internet/jennymacklin.nsf/content/permit\\_system\\_17feb08.htm](http://www.jennymacklin.fahcscia.gov.au/internet/jennymacklin.nsf/content/permit_system_17feb08.htm) (viewed 16 January 2009).

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	<p>The allocations to each state are:</p> <ul style="list-style-type: none"> <li>▪ Queensland – up to \$20 million;</li> <li>▪ Northern Territory – up to \$8 million;</li> <li>▪ Western Australia – up to \$8 million;</li> <li>▪ South Australia – \$7 million;</li> <li>▪ NSW – up to \$4 million; and</li> <li>▪ Victoria, Tasmania, ACT – up to \$1 million each.<sup>43</sup></li> </ul>
<p><b>19 February 2008</b> <i>Indigenous recruitment identified as a priority in the Australian defence force.</i></p>	<p>The Minister for Defence, Science and Personnel identified Indigenous recruitment as a priority for the Australian Defence Force. The Minister said that although Indigenous Australians make up 1.4 per cent of the Australian workforce, only 0.6 per cent of Defence is Aboriginal.<sup>44</sup></p>
<p><b>19 February 2008</b> <i>Roundtable on rural health.</i></p>	<p>The Rural Doctors Association of Australia convened a roundtable meeting with health professionals and consumers at which the Australian Government confirmed its attempts to improve the health of rural, regional and remote communities.</p> <p>The Government's commitments included funding for new clinics, services and health infrastructure in individual rural centres, and a new program to improve the health of Indigenous children.<sup>45</sup></p>
<p><b>20 February 2008</b> <i>Indigenous Education (Targeted Assistance) Amendment (2008 Measures No. 1) Act 2008.</i></p>	<p>The <i>Indigenous Education (Targeted Assistance) Amendment (2008 Measures No. 1) Act 2008</i> (Cth) which funds an additional 200 teachers in the Northern Territory over the next four years, passes into law.</p> <p>The Act amends the <i>Indigenous Education (Targeted Assistance) Act 2000</i> by appropriating additional funding of \$7.162 million over the 2008 school year for the recruitment of 50 of these 200 additional teachers</p> <p>Funding will be provided to NT education providers to recruit and employ the additional teachers. NT education providers will be responsible for deploying and housing the teachers employed through this initiative.<sup>46</sup></p>

43 Minister for Health and Ageing, '50 million to tackle Indigenous alcohol abuse' (Media Release, 17 February 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr019.htm?OpenDocument&yr=2008&mth=2> (viewed 16 January 2009).

44 Minister for Defence, Science and Personnel, 'Indigenous recruitment a priority' (Media Release, 19 February 2008). At <http://www.minister.defence.gov.au/snowdntpl.cfm?CurrentId=7436> (viewed 16 January 2009).

45 Minister for Health and Ageing, 'Progress on rural health improvements' (Media Release, 19 February 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr021.htm?OpenDocument&yr=2008&mth=2> (viewed 16 January 2009).

46 Commonwealth, *Parliamentary Debates*, House of Representatives, 14 February 2008, p 316–317 (The Hon Julia Gillard MP, Minister for Education, Employment and Workplace Relations and Social Inclusion). At <http://www.aph.gov.au/Hansard/reps/dailys/dr140208.pdf> (viewed 27 January 2009).

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<p><b>21 February 2008</b> <i>Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 introduced.</i></p>	<p>As part of the Northern Territory Emergency Intervention amendments to legislation have been introduced into federal Parliament to reduce the exposure of children to pornographic material available on pay television in the Northern Territory.</p> <p>The Bill will amend the <i>Broadcasting Services Act 1992</i>, the <i>Northern Territory National Emergency Response Act 2007</i> and the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>. It will act to restrict potential broadcasting and transportation of pornography to certain communities at the request of the community and after consultation with them.</p> <p>The Bill also proposes to reinstate the permit system but retain the capacity of the Commonwealth Minister to permit selected individuals or classes of individuals, such as journalists, to enter any specified Aboriginal land.<sup>47</sup></p> <p>The Bill adopts an approach which is consistent with the special measures provisions of the Racial Discrimination Act, rather than seeking to override it.<sup>48</sup></p> <p>As of 30 June 2008 the Bill had not yet passed into law.</p>
<p><b>25 February 2008</b> <i>Rollout of income management to Aboriginal town camps.</i></p>	<p>The Australian Government commenced quarantining welfare payments in town camps in Darwin, Palmerston and Adelaide River and the Belyuen community as part of its emergency intervention in the Northern Territory.</p> <p>The measure expanded income management measures across the Northern Territory, and means that a total of 6,400 Centrelink customers in 25 communities and associated outstations and 3 groups of town camps will have welfare payments quarantined.<sup>49</sup></p>
<p><b>25 February 2008</b> <i>Western Australian Coroner's Inquiry handed down</i></p>	<p>In his inquiry into the deaths of 22 Kimberley men and women, the WA coroner, Alastair Hope, recommended that:</p> <ul style="list-style-type: none"> <li>▪ State and Federal Governments assume greater accountability in the provision of health and housing through the nomination of one department to a 'leadership role';</li> </ul>

47 K Magarey & P Pyburne, *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008*, Bills Digest No 82 2007–08, Department of Parliamentary Services (2008), p 17. At <http://www.aph.gov.au/library/Pubs/bd/2007-08/08bd082.pdf> (viewed 13 January 2009).

48 Calma, T., (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Pornography restrictions to further protect Aboriginal children in the NT*, Media Release, 21 February 2008, available online at: [http://www.hreoc.gov.au/about/media/media\\_releases/2008/18\\_08.html](http://www.hreoc.gov.au/about/media/media_releases/2008/18_08.html), accessed 6 August 2008.

49 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Rollout of Income Management to Aboriginal Town Camps in Darwin, Palmerston and Adelaide River' (Media Release, 25 February 2008). At [http://www.jennymacklin.fahcsia.gov.au/Internet/jennymacklin.nsf/content/income\\_management\\_25feb08.htm](http://www.jennymacklin.fahcsia.gov.au/Internet/jennymacklin.nsf/content/income_management_25feb08.htm) (viewed 16 January 2009).

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	<ul style="list-style-type: none"> <li>▪ in cases of child neglect, compulsory income management should be made available to officers from the state Department of Child Protection; and</li> <li>▪ limits should be placed upon the availability of full-strength alcohol for Indigenous and non-Indigenous people in certain communities.<sup>50</sup></li> </ul> <p>A copy of the Coroners report is available at: <a href="http://news.sbs.com.au/shared/medialibrary/pdf/Kimberley_Finding_1_1208233553.pdf">http://news.sbs.com.au/shared/medialibrary/pdf/Kimberley_Finding_1_1208233553.pdf</a></p>
<p><b>29 February 2008</b>  <i>Report on health spending ratios between Indigenous and non-Indigenous Australians.</i></p>	<p>Per person spending on health services for Aboriginal and Torres Strait Islander peoples was 17% higher than for the non-Indigenous population in 2004–05, according to a report released today by the Australian Institute of Health and Welfare.</p> <p>According to the report, <i>Expenditures on Health for Aboriginal and Torres Strait Islander Peoples 2004–05</i>, total expenditure on health for Aboriginal and Torres Strait Islander peoples was estimated at \$2,304 million in 2004–05.</p> <p>State and territory governments and the Australian Government funded almost equal amounts of money for Indigenous health care (48% and 45% respectively) and 8% came from private sources, including out-of-pocket payments.<sup>51</sup></p> <p>However, the level of per capita health expenditure required to meet the health needs of Aboriginal and Torres Strait Islander peoples is estimated to be up to 3–4 times higher (depending on remoteness) than that for the non-Indigenous population<sup>52</sup> due to factors such as:</p> <ul style="list-style-type: none"> <li>▪ the significantly higher burden of disease and poorer health in the Indigenous population when compared to the non-Indigenous population;</li> <li>▪ the significant proportion of the Indigenous population that lives in remote areas where service delivery costs are significantly higher than in the urban areas where the majority of the non-Indigenous population live;</li> </ul>

50 D Weber 'WA Aborigines facing health crisis, says Coroner', *ABC PM*, 25 February 2008. At <http://www.abc.net.au/pm/content/2008/s2172280.htm> (viewed 19 January 2009).

51 Australian Institute of Health and Welfare, 'Health spending ratio between Indigenous and non-Indigenous Australians stays the same' (Media Release, 29 February 2008). At <http://www.aihw.gov.au/mediacentre/2008/mr20080229.cfm> (viewed 16 January 2009).

52 Commonwealth Grants Commission, *Report on Indigenous Funding*, (2001) p 127. At [http://www.cgc.gov.au/\\_data/assets/pdf\\_file/0020/2963/07\\_Chapter\\_6.pdf](http://www.cgc.gov.au/_data/assets/pdf_file/0020/2963/07_Chapter_6.pdf) (viewed 13 January 2009).

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	<ul style="list-style-type: none"> <li>▪ the (in general) lower incomes of Aboriginal and Torres Strait Islander peoples and households when compared to the non-Indigenous population, obliging them to rely more on government provided/funded services and so on and less on private health services and/or privately funded health services.<sup>53</sup></li> </ul>
<p><b>4 March 2008</b> <i>Australian Government commits \$100,000 to address Machado Joseph Disease (MJD) in the Groote Eylandt region.</i></p>	<p>The Australian Government committed \$100,000 to address Machado Joseph Disease (MJD) in the Groote Eylandt region through the Anindilyakwa Land Council.</p> <p>The disease is a disabling genetic condition which causes nerve cells to die prematurely, causing very significant, progressive and permanent physical disability within 10 years. It is relentless and death occurs between six and 29 years of onset.</p> <p>The funding will be used to engage a health professional to undertake work examining the future implications for care of MJD patients on Groote Eylandt.</p> <p>The health professional will assess the provision and delivery of genetic counselling, education and testing services. An education campaign will also be developed for the general community and service providers.<sup>54</sup></p>
<p><b>5 March 2008</b> <i>\$4.6 million for Northern Territory youth projects.</i></p>	<p>\$4.6 million allocated by the Commonwealth government to programs to curb alcohol and drug abuse and anti-social behaviour among young people in Northern Territory Aboriginal communities.</p> <p>The 24 projects will teach young people vocational and life skills and build pride and self confidence through healthy, safe activities and increased participation in constructive community life.</p> <p>Twenty-one of the projects are being funded through Youth Diversionary Activities and five are funded through the Central Australia Petrol Sniffing Strategy Unit (CAPSSU).</p> <p>The funding is part of the \$7.6 million committed to youth initiatives as part of the Northern Territory Emergency Response.<sup>55</sup></p>

53 J Deeble, J Shelton Agar and J Goss, *Expenditures on Health for Aboriginal and Torres Strait Islander Peoples 2004–05*, Health and Welfare Expenditure Series Number 33, Australian Institute of Health and Welfare (2008), p 1. At <http://www.aihw.gov.au/publications/hwe/eohfatsip04-05/eohfatsip04-05.pdf> (viewed 13 January 2009).

54 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Addressing Machado Joseph Disease on Groote Eylandt' (Media Release, 4 March 2008). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/groote\\_eylandt\\_04mar08.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/groote_eylandt_04mar08.htm) (viewed 16 January 2009).

55 Minister for Families, Housing, Community Services and Indigenous Affairs, '\$4.6 million for Northern Territory Youth Projects' (Media Release, 5 March 2008). At [http://www.jennymacklin.fahcsia.gov.au/Internet/jennymacklin.nsf/content/nt\\_youth\\_projects\\_05mar08.htm](http://www.jennymacklin.fahcsia.gov.au/Internet/jennymacklin.nsf/content/nt_youth_projects_05mar08.htm) (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>7 March 2008</b> <i>Funding for Indigenous arts organisations.</i></p>	<p>The Minister for the Environment, Heritage and the Arts today announced funding of \$1.3 million from the Indigenous Visual Arts Special Initiative to provide 24 Indigenous art centres with infrastructure, training and marketing support.</p> <p>In 2007–08 special initiative funding will support 28 one-off projects to build the sustainability of Indigenous arts organisations across a range of areas. Projects funded through this initiative include:</p> <ul style="list-style-type: none"> <li>▪ A development program for Central Australian art centre managers (NT, SA and WA) to be delivered by Desart, the peak body for art centres in the region;</li> <li>▪ The construction of staff accommodation for Warakurna Artists in remote WA to allow this successful art centre to expand services to its artists; and</li> <li>▪ A survey and marketing project to be conducted by Arts Northern Rivers in northern NSW to boost the profile of Indigenous artists from this region.</li> </ul> <p>The special initiative funding complements the National Arts and Crafts Industry Support program and is in line with the findings of a recent Senate Committee Report into the Indigenous visual art sector, <i>Indigenous Art – Securing the Future</i>.</p> <p>This report acknowledged the significance of Australia’s Indigenous visual arts and craft as one of the world’s great contemporary movements in art.<sup>56</sup></p> <p>More information on the National Arts and Crafts Industry Support program is available online at: <a href="http://www.arts.gov.au/indig">www.arts.gov.au/indig</a></p>
<p><b>10 March 2008</b> <i>Solar power stations for Indigenous communities.</i></p>	<p>The Australian and Northern Territory Governments announced that three remote Indigenous communities, Alekerange, Ti Tree and Kalkarindji, are to be powered from cleaner energy sources.</p> <p>Two eight-dish, 280 kilowatt concentrating solar power stations will be built at Ti Tree and Kalkarindji, and a 24-dish, 840 kilowatt power station will be built at Alekerange.<sup>57</sup></p>

56 Minister for Environment, Heritage and the Arts, ‘Special funding recognises the value of Indigenous arts organisations’ (Media Release, 7 March 2008). At <http://www.environment.gov.au/minister/garrett/2008/pubs/mr20080307.pdf> (viewed 16 January 2009).

57 Minister for Environment, Heritage and the Arts, ‘Solar power stations for Indigenous communities’ (Media Release, 10 March 2008). At <http://www.environment.gov.au/minister/garrett/2008/pubs/mr20080310a.pdf> (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>14 March 2008</b> <i>Dare to Lead: Excellence in Leadership in Indigenous Education Awards announced.</i></p>	<p>The Australian Minister for Education announced outstanding leadership awards in Indigenous education for 16 schools from across Australia</p> <p>The achievements of these schools include improving attendance for year 10 to year 12 students and increasing school enrolments and graduation rates of Indigenous students.</p> <p>The <i>Dare to Lead: Excellence in Leadership in Indigenous Education Awards</i> is a national project that helps to improve the educational outcomes of Aboriginal students.<sup>58</sup></p>
<p><b>14 March 2008</b> <i>Commonwealth, State and Territory Housing Ministers meet in Melbourne today.</i></p>	<p>The Australian Government's priority to tackle homelessness was a key item of discussion at the first meeting of Commonwealth, State and Territory Housing Ministers in Melbourne.</p> <p>Other items discussed included:</p> <ul style="list-style-type: none"> <li>▪ Housing for Indigenous Australians;</li> <li>▪ The National Affordable Housing Agreement; and</li> <li>▪ The COAG Housing Working Group.<sup>59</sup></li> </ul>
<p><b>17 March 2008</b> <i>Release of Deaths in Custody in Australia: National Deaths in Custody Program Annual Report 2006.</i></p>	<p>This report presents information on deaths in custody in Australian states and territories for the 2006 calendar year, including comparisons by jurisdiction and Indigenous status.</p> <p>Information is also presented on deaths in custody in Australian states and territories between 1980 and 2006 for prison custody and between 1990 and 2006 for police custody and custody-related operations.</p> <p>The report found that in 2006 there were 54 deaths in custody (48 males and five females), comprising 31 deaths in prison custody and 22 in police custody and custody-related operations. One male died in juvenile detention. Eleven deaths were Indigenous peoples and two of the seven hanging deaths were of Indigenous peoples. Ten deaths occurred during motor vehicle pursuits (four of these were Indigenous peoples) and two deaths resulted from police shootings (both were non-Indigenous people).<sup>60</sup></p>

58 Minister for Education, 'Dare to Lead – Making the Difference: 2008 Indigenous Education Awards' (Media Statement, 14 March 2008). At <http://www.alp.org.au/media/0308/msed141.php> (viewed 16 January 2009).

59 Minister for Housing and Minister for Families, Housing, Community Services and Indigenous Affairs, 'Homelessness Agenda Builds Momentum' (Media Release, 14 March 2008). At [http://www.fahcsia.gov.au/Internet/tanyaplibersek.nsf/content/homelessness\\_agenda\\_14mar08.htm](http://www.fahcsia.gov.au/Internet/tanyaplibersek.nsf/content/homelessness_agenda_14mar08.htm) (viewed 16 January 2009).

60 Australian Institute of Criminology, *Deaths in custody in Australia: National Deaths in Custody Program annual report 2006*, Research and public policy series, No 85 (2008). At <http://www.aic.gov.au/publications/rpp/85/> (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>18–20 March 2008</b>  <i>National Indigenous Health Equality Summit</i></p>	<p>The Close the Gap Steering Committee for Indigenous Health Equality (Steering Committee) led by the Aboriginal and Torres Strait Islander Social Justice Commissioner convened the <i>National Indigenous Health Equality Summit</i> over 18 – 20 March 2008.</p> <p>More than 100 representatives from Indigenous and mainstream health peak bodies, non-government organisations, the reconciliation movement and Australian Government representatives attended the Summit in Canberra.</p> <p>At the Summit the <i>Draft Close the Gap National Indigenous Health Equality Targets</i> for: partnership; health status; primary health care and other health services; and infrastructure (with social and cultural determinants to be developed) were presented to the delegates for comments and feedback. These were developed by the Steering Committee with the help of wide range of health experts in the lead up to the Summit. After the Summit, the targets were finalised by the expert members of the targets working groups and published in July 2008.</p> <p>The Australian Government announced two significant new policy initiatives at the Indigenous Health Equality Summit. The Government will invest \$19 million over three years in a National Indigenous Health Workforce Training Plan and \$14.5 million over four years to tackle high smoking rates in Indigenous communities. Supporting a strong Indigenous health workforce and encouraging more Indigenous peoples to take up careers as health professionals is critical to improving health services and increasing Indigenous peoples' life expectancy.<sup>61</sup></p>
<p><b>20 March 2008</b>  <i>Statement of Intent signed on Indigenous health.</i></p>	<p>The National Indigenous Health Equality Summit culminated with a ceremony at the Great Hall in Parliament House and the signing of a <i>Close the Gap Indigenous Health Equality Summit Statement of Intent</i> (Statement of Intent). The main signatories to this were the:</p> <ul style="list-style-type: none"> <li>▪ Prime Minister;</li> <li>▪ Leader of the Opposition;</li> <li>▪ Minister for Health and Ageing;</li> <li>▪ Minister for Families, Housing, Communities and Indigenous Affairs;</li> <li>▪ Presidents and Chairs of the four main Indigenous health peak bodies:</li> </ul>

61 Prime Minister, Minister for Health and Ageing, and Minister for Families, Housing, Community Services and Indigenous Affairs, 'Rudd government tackles Indigenous smoking rates and health workforce in next down payments on closing the gap' (Media Release, 20 March 2008). At [http://www.pm.gov.au/media/release/2008/media\\_release\\_0143.cfm](http://www.pm.gov.au/media/release/2008/media_release_0143.cfm), (viewed 16 January 2009).

Date	Event/summary of issue
	<ul style="list-style-type: none"> <li>- the National Aboriginal Community Controlled Health Organisation,</li> <li>- the Australian Indigenous Doctors' Association,</li> <li>- the Congress of Aboriginal and Torres Strait Islander Nurses, and</li> <li>- the Australian Indigenous Dentists' Association;</li> </ul> <ul style="list-style-type: none"> <li>▪ Presidents and CEOs of the four main mainstream health peak bodies; <ul style="list-style-type: none"> <li>- the Australian Medical Association,</li> <li>- the Royal Australian College of General Practitioners,</li> <li>- the Royal College of Australasian Physicians; and</li> <li>- the Australian General Practice Network;</li> </ul> </li> <li>▪ Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission (then the Human Rights and Equal Opportunity Commission).<sup>62</sup></li> </ul> <p>The body of the Statement says:</p> <p>This is a Statement of Intent – between the Government of Australia and the Aboriginal and Torres Strait Islander Peoples of Australia, supported by non-Indigenous Australians and Aboriginal and Torres Strait Islander and non-Indigenous health organizations – to work together to achieve equality in health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by the year 2030. Commitments were made:</p> <ul style="list-style-type: none"> <li>▪ To developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non- Indigenous Australians by 2030.</li> <li>▪ To ensuring primary health care services and health infrastructure for Aboriginal and Torres Strait Islander peoples which are capable of bridging the gap in health standards by 2018.</li> <li>▪ To ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.</li> <li>▪ To working collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples.</li> </ul>

<sup>62</sup> Other signatories included Oxfam Australia, Australians for Native Title and Reconciliation, Reconciliation Australia, Get Up!, Catherine Freeman Foundation; Ian Thorpe's Fountain for Youth; and the Australian Doctors Trained Overseas Association.

Date	Event/summary of issue
	<ul style="list-style-type: none"> <li>▪ To building on the evidence base and supporting what works in Aboriginal and Torres Strait Islander health, and relevant international experience.</li> <li>▪ To supporting and developing Aboriginal and Torres Strait Islander community-controlled health services in urban, rural and remote areas in order to achieve lasting improvements in Aboriginal and Torres Strait Islander health and wellbeing.</li> <li>▪ To achieving improved access to, and outcomes from, mainstream services for Aboriginal and Torres Strait Islander peoples.</li> <li>▪ To respect and promote the rights of Aboriginal and Torres Strait Islander peoples, including by ensuring that health services are available, appropriate, accessible, affordable, and of good quality.</li> <li>▪ To measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.<sup>63</sup></li> </ul> <p>Also at the National Indigenous Health Equality Summit, the government announced the creation of the National Indigenous Health Equality Council (NIHEC) to progress its close the gap commitments.</p> <p>The NIHEC is intended to 'provide national leadership in responding to Government's commitment to closing the gap on Indigenous disadvantage by providing advice to Government on working towards the provision of equitable and sustainable health outcomes for Indigenous Australians.'<sup>64</sup></p>
<p><b>20 March 2008</b>  <i>Annual Social Justice and Native Title Reports tabled in Parliament</i></p>	<p>The Aboriginal and Torres Strait Islander Social Justice Commissioner tabled the <i>Social Justice Report 2007</i> and the <i>Native Title Report 2007</i> in the House of Representatives.</p> <p>The reports, produced annually by the Aboriginal and Torres Strait Islander Social Justice Commissioner, consider the impact of government activity on the exercise and enjoyment of Indigenous people's human rights.<sup>65</sup></p> <p>The Social Justice and Native Title Reports are available online at: <a href="http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/">http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/</a> and <a href="http://www.humanrights.gov.au/social_justice/nt_report/ntreport07/">http://www.humanrights.gov.au/social_justice/nt_report/ntreport07/</a>.</p>

63 *Close the Gap Indigenous Health Equality Summit Statement of Intent*, Canberra (20 March 2008). At [http://humanrights.gov.au/social\\_justice/health/statement\\_intent.html](http://humanrights.gov.au/social_justice/health/statement_intent.html) (viewed 16 January 2009).

64 Department of Health and Ageing, *National Indigenous Health Equality Council Terms of Reference* (2008). At <http://www.nihec.gov.au/internet/nihec/publishing.nsf/Content/terms> (viewed 16 January 2009).

65 Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Annual Social Justice and Native Title Reports tabled in Parliament today' (Media Release, 20 March 2008). At [http://www.hreoc.gov.au/about/media/media\\_releases/2008/30\\_08.html](http://www.hreoc.gov.au/about/media/media_releases/2008/30_08.html) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>The <i>Social Justice Report 2007</i> examines the human rights implications of the <i>Northern Territory Emergency Response</i> introduced in the Northern Territory in 2007, in response to the problems of family violence and child abuse identified in the little <i>Children Are Sacred Report</i>.</p> <p>The report outlines a Ten Point Action Plan for modifying the Intervention so that it respects the human rights of Indigenous peoples, which includes restoring all rights to procedural fairness and external merits review under the Intervention legislation; and reinstating protections against racial discrimination in the operation of the Intervention legislation, among others.</p> <p>The report also draws attention to 19 examples of successful programs for addressing family violence in Indigenous communities including programs in: community education; healing; alcohol management; men’s groups; family support and child protection; safe houses; and programs for offenders.</p> <p>These case studies provide an opportunity to celebrate the successes and offer some key lessons to build on such as, the importance of community consultation and community capacity building, the value of taking a holistic approach to deal with complex issues and the critical need to involve men and empower women.</p> <p>The <i>Native Title Report 2007</i> examined the effectiveness of the native title system and in light of the deficiencies identified recommended a comprehensive review of the whole native title system focusing on how the system may better deliver protection and recognition of native title.</p> <p>The report also profiles some of the positive initiatives where Indigenous people are using their land to pursue economic, social, cultural and environmental outcomes e.g. Western Arnhem Land Fire Abatement project and the Central Queensland ILUA template.</p>
<p><b>27 March 2008</b>  <i>Training to combat family violence on the ground in Indigenous communities.</i></p>	<p>The Australian Human Rights Commission (then known as the Human Rights and Equal Opportunity Commission) commenced human rights training for community workers aiming to arrest family violence in Indigenous communities.</p> <p>In 2007 the Commonwealth Attorney-General’s Department provided funding to 9 Family Violence Prevention Legal Services (FVPLS) to employ 15 Community Legal Education (CLE) workers. The role of the CLE workers is to raise awareness amongst Indigenous Australians about the standards of Australian law that are relevant to family violence, and to clarify the relationship between Australian law and customary law.</p>

Date	Event/summary of issue
	<p>In June 2007 the Commission was funded by the Attorney-General's Department to develop and deliver an education module for these 15 Community Legal Education workers. The workers came from FVPLS located in Geraldton, Katherine, Kimberley, Port Augusta, Darwin, Alice Springs, Cape York, Forbes and Melbourne.</p> <p>The training program is underpinned by community development theory and practice and the content of the training focuses on Australian law and customary law as they are relevant to preventing violence in Indigenous communities.</p> <p>This training will enable workers to get out and work directly with local schools and health clinics to promote and explain the rights and responsibilities they each have in combating family violence in a way that is clear and culturally appropriate.<sup>66</sup></p>
<p><b>1 April 2008</b> <i>Income management rollout continues across Northern Territory.</i></p>	<p>The Australian Government commenced quarantining welfare payments for an additional 1,190 Centrelink customers in the Northern Territory communities of Galiwinku, Atitjere, Engawala and Nguiu.</p> <p>This latest round of income management measures across the NT expands the initiative to cover more than 7,700 people across 29 communities, and town camps in and around Darwin, Katherine and Alice Springs.</p> <p>Income management is one part of the Northern Territory Emergency response. Welfare recipients have 50 per cent of their payments quarantined in an attempt to ensure income is spent on essential items.</p> <p>An initial survey of 10 community stores in remote NT communities found that six stores have recorded an increase in turnover since November.<sup>67</sup></p>
<p><b>1 April 2008</b> <i>New PBS listings for April 2008.</i></p>	<p>The Australian Government announced that it would provide an oral treatment for dermatophyte infections (a type of fungal skin infection) to the Aboriginal and Torres Strait Islander community through the PBS, with the listing of terbinafine hydrochloride tablets (GenRx Terbinafine, Tamsil, Terbihexal, Zabel, Lamisil).</p> <p>The listing will be made through the Primary Health Care Access Program for Aboriginal and Torres Strait Islander peoples, which aims to improve the capacity of the PBS to meet their needs.</p>

66 Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Training to combat family violence on the ground in Indigenous communities' (Media Release, 27 March 2008). At [http://www.humanrights.gov.au/about/media/media\\_releases/2008/32\\_08.html](http://www.humanrights.gov.au/about/media/media_releases/2008/32_08.html) (viewed 16 January 2009).

67 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Income Management Rollout Continues Across Northern Territory Communities' (Media Release, 1 April 2008). At [http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/income\\_management\\_1apr2008.htm](http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/income_management_1apr2008.htm) (viewed 16 January 2009).

Date	Event/summary of issue
	It will be available only where topical treatment has failed. This listing is expected to benefit about 13,000 patients over the next five years, at a cost of around \$1.2 million to the PBS. <sup>68</sup>
<p><b>3 April 2008</b> <i>Indigenous Nurse Home Visiting Program</i></p>	<p>The Australian Health Minister, visiting North Queensland, announced that Wuchopperen Health Service in North Queensland has been selected as one of two sites for the early roll-out of the Australian Government's nurse home visiting program for Indigenous children.</p> <p>The nurse home visit program is part of the Government's \$260 million commitment to closing the 17-year life expectancy gap between Indigenous and non-Indigenous people within a generation, and improving the health of Indigenous women and children. The commitment also has a goal of halving the rate at which Indigenous children die before the age of five within a decade.<sup>69</sup></p>
<p><b>6 April 2008</b> <i>\$6 million to tackle family violence in Indigenous communities.</i></p>	<p>The Australian Government announced a commitment of more than \$6 million to tackle the serious levels of violence and increase reporting of child abuse in Indigenous communities.</p> <p>A number of existing programs will receive a funding boost to expand their scope and effectiveness. The Australian Government will provide \$2.95 million over three years to the <i>Kids Living Safer Lives</i> program. This program operates in the Cape York communities of Hope Vale, Aurukun, Coen, Mossman Gorge, Lockhart River, Pormpuraaw and Kowanyama.</p> <p>Another \$1.7 million will be provided for safe houses for victims of violence and abuse in the Northern Territory. Safe houses have already been established in Elliot, Ali Curung and Borroloola and are about to be completed in Pmara-Jutunta, Yuendumu, Hermannsburg and Finke. An additional 18 safe houses will be established in other remote communities, including Wadeye and Milikapiti.</p> <p>\$1.5 million will be provided for child protection workers to identify children at risk of abuse. These workers will be placed in organisations providing services including child care and drug and alcohol rehabilitation.<sup>70</sup></p>

68 Minister for Health and Ageing, 'New PBS listings for April 2008' (Media Release, 1 April 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr037.htm?OpenDocument&yr=2008&mth=4> (viewed 16 January 2009).

69 Minister for Health and Ageing, 'Indigenous Nurse Home Visiting Program To Commence' (Media Release, 3 April 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr039.htm?OpenDocument&yr=2008&mth=4> (viewed 16 January 2009).

70 Minister for Families, Housing, Community Services and Indigenous Affairs, '\$6 Million to Tackle Family Violence in Indigenous Communities' (Media Release, 6 April 2008). At [http://www.fahcisia.gov.au/internet/jennymacklin.nsf/content/family\\_violence\\_indig\\_06apr08.htm](http://www.fahcisia.gov.au/internet/jennymacklin.nsf/content/family_violence_indig_06apr08.htm) (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>8 April 2008</b>  <i>Commencement of Footprints in Time – landmark study of Indigenous children.</i></p>	<p>Australia’s Longitudinal Study of Indigenous Children, <i>Footprints in Time</i> will track the long-term development of 2,200 Indigenous children from communities across Australia.</p> <p>This landmark study will give researchers the capacity to look in depth at the early childhood experiences of Indigenous children and how these experiences influence their future.</p> <p>The study will provide policy makers with an evidence base to assist in the design and delivery of program and policy interventions for Indigenous children in the early years.</p> <p>Collecting data from 2,200 children, starting with two age groups, (6–18 months and 3½ to 4½ years) the study will trace how their circumstances change over at least four years. The study will include children from diverse locations.</p> <p>The first wave of data collection is planned from 16 April to 30 September. This study is a key part of the Australian Government’s Indigenous Early Childhood package.<sup>71</sup></p>
<p><b>9 April 2008</b>  <i>Extension of the alcohol ban at Fitzroy Crossing.</i></p>	<p>The Australian Government announced that it will support the continuation of the Indigenous community’s initiative to ban alcohol at Fitzroy Crossing beyond its current expiry date of 23 May 2008.</p> <p>There have been improvements in health, education and safety since the ban was imposed by the Western Australian director of liquor licensing in October at the request of local women.</p> <p>A study by the Notre Dame University has found that the alcohol ban has led to a 50 per cent fall in the number of people seeking treatment at the Fitzroy Crossing Emergency Department.</p> <p>As well there has been a 27 per cent reduction in alcohol related domestic violence, and a 14 per cent increase in high school attendance.<sup>72</sup></p>
<p><b>9 April 2008</b>  <i>Boost for mental health services in Western Australia.</i></p>	<p>The Australian Government announced that it will fund a range of mental health programs in Western Australia to tackle high levels of mental illness and suicide in many remote Indigenous communities.</p>

71 Minister for Families, Housing, Community Services and Indigenous Affairs, ‘First Footprints in Landmark Study of Indigenous Children’ (Media Release, 8 April 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/first\\_footprints\\_08apr08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/first_footprints_08apr08.htm), (viewed 16 January 2009).

72 Minister for Families, Housing, Community Services and Indigenous Affairs, ‘Extending the alcohol ban at Fitzroy Crossing’ (Media Release, 9 April 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/alcohol\\_ban\\_fitzroy\\_09apr08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/alcohol_ban_fitzroy_09apr08.htm) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>Nationally, the Australian Government will provide \$15.4 million through the National Respite Development Fund. Of this, \$5.3 million has been allocated to Western Australia and includes establishing and expanding respite services for carers of people with severe mental illness, psychiatric disability, or intellectual disability.</p> <p>The rollout of services in the Kimberley will be implemented in three stages including:</p> <ul style="list-style-type: none"> <li>▪ community consultation with Indigenous peoples and communities;</li> <li>▪ establishment of services and training of staff; and</li> <li>▪ the delivery of respite services.<sup>73</sup></li> </ul>
<p><b>10 April 2008</b> <i>Safe housing for young Indigenous peoples.</i></p>	<p>Hostels to provide accommodation for up to 100 young people will be built in four remote West Australian communities to give young Indigenous peoples better education and training opportunities. The hostels will be constructed in Halls Creek, Derby, Fitzroy Crossing and Broome over the next financial year under a joint agreement between the Australian and West Australian Governments.</p> <p>The Australian Government has committed \$10 million to fund the construction with the West Australian Government taking responsibility for the project management.</p> <p>Each hostel will have the capacity to accommodate 24 young people needing stable, affordable accommodation while they go to school or complete training courses.</p> <p>The new hostels would be modeled on the 'Better Life' Project based in Halls Creek.<sup>74</sup></p>
<p><b>12 April 2008</b> <i>New housing project for Northern Territory Indigenous communities.</i></p>	<p>A joint housing program between the Australian and Northern Territory Governments will deliver construction, refurbishment and infrastructure developments, as well as jobs in 73 Northern Territory Indigenous communities and some urban areas.</p> <p>The Australian Government will contribute \$547 million over four years through the Northern Territory Government, and the Territory Government will provide a further \$100 million.</p>

73 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Boost for mental health services in Western Australia' (Media Release, 9 April 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/mental\\_health\\_9apr08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/mental_health_9apr08.htm) (viewed 16 January 2009).

74 Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Housing and Works, Indigenous Affairs, Heritage and Land Information, 'Safe housing for young Indigenous Australians' (Media Release, 10 April 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/indigenous\\_housing\\_10apr08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/indigenous_housing_10apr08.htm) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>The program will deliver:</p> <ul style="list-style-type: none"> <li>▪ around 750 new houses including new subdivisions;</li> <li>▪ over 230 new houses to replace houses to be demolished;</li> <li>▪ over 2,500 housing upgrades;</li> <li>▪ essential infrastructure to support new houses; and</li> <li>▪ improvements to living conditions in town camps.</li> </ul> <p>A total of \$420 million for major works in 16 high need communities and more than \$124 million for refurbishments in an additional 57 communities will be provided. A further \$103 million will be directed towards town camps, urban living areas and a small number of existing housing programs.<sup>75</sup></p>
<p><b>14 April 2008</b>  <i>Follow-up health treatments begin for children identified in the Northern Territory Emergency Response.</i></p>	<p>Five hundred children across the Northern Territory are expected to receive Ear Nose and Throat (ENT) surgery through visiting surgeons.</p> <p>With more than 8500 child health checks completed, almost one third of the children seen were found to have ear diseases and approximately one in 14 children required specialist ENT services to help them treat hearing impairment.</p> <p>Other actions included:</p> <ul style="list-style-type: none"> <li>▪ 39 per cent of children were referred for follow-up primary health care, including treatment of skin conditions or ear infections, immunisation, and new blood tests for anaemia;</li> <li>▪ 28 per cent were referred for dental treatment;</li> <li>▪ 10 per cent were referred for paediatric services;</li> <li>▪ 8 per cent were in need of audiology and hearing services; and</li> <li>▪ 7 per cent were referred for ear, nose and throat specialist services.</li> </ul> <p>The Australian Government has committed \$183 million over the next three years to the Department of Health and Ageing for the Northern Territory Emergency Response – Improving Child and Family Health measure.<sup>76</sup></p>

75 Minister for Families, Housing, Community Services and Indigenous Affairs, Northern Territory Chief Minister, and Minister for Defence Science and Personnel 'Landmark housing project for NT Indigenous communities' (Media Release, 12 April 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/landmark\\_housing\\_12april08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/landmark_housing_12april08.htm) (viewed 16 January 2009).

76 Minister for Health and Ageing, 'NT Indigenous kids health blitz begins' (Media Release, 14 April 2008). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr053.htm?OpenDocument&yr=2008&mth=4> (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>29 April 2008</b> <i>Launch of the Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008 report.</i></p>	<p>This report by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare provides comprehensive, accurate information on the health and welfare of Indigenous Australians.</p> <p>The Report shows:</p> <ul style="list-style-type: none"> <li>▪ the majority of Indigenous Australians die before reaching the age of 65 years;</li> <li>▪ Indigenous children are over represented in the child protection system – the rate of Indigenous children on care and protection orders is over six times the rate of other children;</li> <li>▪ hospitalisation for kidney dialysis is 14 times the rate of non-Indigenous people;</li> <li>▪ more than 100,000 Indigenous peoples live in sub-standard, overcrowded housing;</li> <li>▪ 50 per cent of Indigenous adults are smokers and two thirds start smoking before they turn 18; and</li> <li>▪ 20 per cent of Indigenous peoples living in remote areas reported no usual daily intake of fruit while 15 per cent reported no usual daily intake of fresh vegetables.<sup>77</sup></li> </ul>
<p><b>30 April 2008</b> <i>Government timetable for Indigenous employment reforms announced.</i></p>	<p>The Australian Government announced a timetable for Indigenous employment reforms. Consultations on Indigenous employment services reforms will start shortly and will form part of a broader Indigenous Economic Development Strategy to be announced by the end of the year.</p> <p>The Department of Families, Housing, Community Services and Indigenous Affairs will write to all current CDEP providers advising them that up to a further 12 months of funding will be available from 1 July 2008 to ensure people are working while reforms are being progressively introduced.<sup>78</sup></p>
<p><b>30 April 2008</b> <i>Report of the Children on APY Lands Commission</i></p>	<p>The Report of the Children on APY Lands Commission ('Mullighan Enquiry') is presented to the South Australian Parliament.</p> <p>The Report is available online at: <a href="http://www.service.sa.gov.au/ContentPages/sagovt/mullighaninquiry_apy.aspx">http://www.service.sa.gov.au/ContentPages/sagovt/mullighaninquiry_apy.aspx</a></p>

77 Minister for Families, Housing, Community Services and Indigenous Affairs, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander peoples*, 2008 (Speech delivered at the launch of the AIHW/ABS Report, 29 April 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/health\\_welfare\\_29apr08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/health_welfare_29apr08.htm)(viewed 16 January 2009).

78 Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Employment Participation, 'Government timetable for Indigenous employment reforms announced' (Media Release, 2 May 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/gov\\_timetable\\_30apr08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/gov_timetable_30apr08.htm), (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>2 May 2008</b> <i>Australian Institute of Health and Welfare report on Maternal Deaths in Australia 2003–2005</i></p>	<p>The Australian Institute of Health and Welfare today released its report on <i>Maternal Deaths in Australia 2003–2005</i>. While Australia’s overall low maternal death rate has fallen, the mortality rate among Aboriginal and Torres Strait Islander women is still unacceptably high.</p> <p>Nationally, 65 deaths were reported, compared to 84 over the previous three-year period. This represents a maternal death rate of 8.4 per 100,000 women, one of the lowest maternal death rates in the world. But the rate for Aboriginal and Torres Strait Islander women was far higher – 21.5 deaths per 100,000 women; more than two and half times the non-Indigenous rate of 7.9.</p> <p>The Government has allocated \$261.4 million over five years to tackle Indigenous maternal and infant health through <i>New Directions – An equal start in life for Indigenous Children</i> and is also developing a national maternity services plan to support the coordination of maternity services.<sup>79</sup></p>
<p><b>13 May 2008</b> <i>2008–09 Budget.</i></p>	<p>In support of its commitment to turn around Indigenous disadvantage the Australian Government announced the allocation of \$425.3 million in new funds in the 2008–09 Budget. The funding is provided across eight portfolios, and falls under three main funding strands.</p> <p>The three strands of funding are: Closing the Gap for Indigenous Australians; Closing the Gap in the Northern Territory; and Closing the Gap for Indigenous Australians – Other Measures.</p> <p>The Budget measures build on \$580 million in major initiatives announced in February for closing the gap in life expectancy, infant mortality, education and employment. In addition, the Government redirected \$222.5 million in funding to address key priorities.<sup>80</sup></p>
<p><b>18 May 2008</b> <i>Discussion paper on Indigenous employment reforms.</i></p>	<p>A discussion paper to encourage debate and ideas on economic development and jobs for Indigenous Australians was released by the Australian Government.</p> <p>The nationwide consultations will focus on how to reform two existing employment and work-readiness programs – Community Development Employment Program (CDEP) and the Indigenous Employment Program (IEP).</p>

79 Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Health and Ageing, ‘Maternal deaths high for Indigenous women’ (Media Release, 30 April 2008). At [http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/maternal\\_deaths\\_2may08.htm](http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/maternal_deaths_2may08.htm) (viewed 16 January 2009).

80 Department of Families, Housing, Community Services and Indigenous Affairs, *Closing The Gap* (2008). At [http://www.fahcsia.gov.au/budget/ministerial\\_statement/part1.htm](http://www.fahcsia.gov.au/budget/ministerial_statement/part1.htm) (viewed 16 January 2009). Full details of the Indigenous Budget 2008–09 can be found online at: [http://www.fahcsia.gov.au/budget/ministerial\\_statement/appendix2.htm](http://www.fahcsia.gov.au/budget/ministerial_statement/appendix2.htm) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>The discussion paper looks at how individuals, businesses, communities and partnerships must be involved to lift Indigenous employment rates. The paper also looks at how employers of Indigenous workers can be better supported, building on the success of the Structure Training and Development Program and Structured Training and Employment Projects Related Services programs.</p> <p>The Indigenous Economic Development Strategy will be launched later in 2008 and will complement the Government's new employment services model to be implemented from July 2009.<sup>81</sup></p>
<p><b>20 May 2008</b> <i>Regional Partnership Agreement for Groote Eylandt region.</i></p>	<p>Indigenous peoples in the Groote Eylandt region will benefit from a Regional Partnership Agreement signed between the Australian Government, the Northern Territory Government and the Anindilyakwa Land Council.</p> <p>Under the Agreement the education and employment needs of the region will be reviewed to identify how to improve education outcomes and employment rates.<sup>82</sup></p>
<p><b>20 May 2008</b> <i>New substance abuse intelligence unit to be based in Katherine.</i></p>	<p>The Australian Government announced that they would provide \$2 million for law and order activities under the Northern Territory Emergency Response for a new Substance Abuse Intelligence Desk to be based in Katherine. The Minister for Indigenous Affairs and Northern Territory Chief Minister said both governments recognised the toll substance abuse has on Indigenous communities.<sup>83</sup></p>
<p><b>20 May 2008</b> <i>First residential boarding facility on Tiwi Islands.</i></p>	<p>The first residential boarding facility on the Tiwi Islands was officially opened at Pickertaramoor on Melville Island. Students had commenced classes at Tiwi College in February 2008.</p> <p>Three family group homes have been constructed at the Tiwi College, providing accommodation for up to 36 students. The family group homes provide students with</p>

81 Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Employment Participation, 'Discussion paper on Indigenous employment reforms' (Media Release, 18 May 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/dis\\_paper\\_indig\\_19may08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/dis_paper_indig_19may08.htm) (viewed 16 January 2009).

82 Minister for Families, Housing, Community Services and Indigenous Affairs, Northern Territory Chief Minister, and Minister for Defence Science and Personnel, 'Historic Agreement for Groote Eylandt region' (Media Release, 20 May 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/groote\\_eylandt\\_20may08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/groote_eylandt_20may08.htm), (viewed 16 January 2009).

83 Minister for Families, Housing, Community Services and Indigenous Affairs, Northern Territory Chief Minister, and Minister for Defence Science and Personnel, 'New Substance Abuse Intelligence Desk and Dog Operations Unit' (Media Release, 20 May 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt\\_said\\_20may08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt_said_20may08.htm) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>accommodation from Tuesdays to Saturdays with full-time house parents to ensure the students are fed, rested and prepared for class.</p> <p>The Australian Government has committed \$16 million to the Tiwi College, \$2 million of which is for an extension to the college this year to increase enrolment to 84 children. The boarding capacity will be increased to up to 48 students once the fourth home is completed.<sup>84</sup></p>
<p><b>29 May 2008</b> <i>Indigenous Affairs Legislation Amendment Bill 2008 introduced into Parliament.</i></p>	<p>The Indigenous Affairs Legislation Amendment Bill 2008 was introduced into Parliament. The aim of the Bill is to allow for more flexible lease arrangements in Aboriginal communities in the Northern Territory.</p> <p>Township leases under the <i>NT Aboriginal Land Rights Act</i> will be able to be set from 40 to 99 years, rather than the current fixed 99 year leases.</p> <p>The Executive Director of Township Leasing, an independent statutory officeholder set up under the <i>Land Rights Act</i>, currently holds township leases.</p> <p>The Executive Director will also be able to hold title to other types of leases over Aboriginal-owned land in the Northern Territory, including over community living areas and town camps.</p> <p>A framework is also provided for payments to be negotiated for five year leases acquired under the Emergency Response, which will minimise the prospect of these matters needing to be resolved in the courts.</p> <p>The Bill also enables 13 parks and reserves claimed under the <i>Land Rights Act</i> in the Northern Territory to become Aboriginal land. The parks and reserves will be immediately leased back to the Northern Territory Government so that they can continue to operate as national parks.<sup>85</sup></p> <p>The Bill passed into law on 1 July 2008.</p>
<p><b>6 June 2008</b> <i>Northern Territory Emergency Response Review Board established.</i></p>	<p>The Northern Territory Emergency Response (NTER) Review Board was established to conduct an independent and transparent review of the NTER to assess what is working, whether the measures are effective and their impact to date on individuals and communities. The Board will consult widely and seek public submissions.</p>

84 Minister for Families, Housing, Community Services and Indigenous Affairs, Deputy Chief Minister of the NT, and Minister for Defence Science and Personnel, 'First residential boarding facility on Tiwi Islands' (Media Release, 20 May 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/tiwi\\_islands\\_20may08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/tiwi_islands_20may08.htm) (viewed 16 January 2009).

85 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Greater flexibility in NT leases' (Media Release, 29 May 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt\\_lease\\_29may08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt_lease_29may08.htm) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>An independent expert group will support the Review Board. The group will be comprised of 11 experts drawn from public policy, health, child welfare, legal and economic development fields.</p> <p>The NTER Board will:</p> <ul style="list-style-type: none"> <li>▪ examine evidence and assess the overall progress of the NTER in improving the safety and wellbeing of children and laying the basis for a sustainable and better future for residents of remote communities in the Northern Territory (NT);</li> <li>▪ consider what is and isn't working and whether the current suite of NTER measures will deliver the intended results, whether any unintended consequences have emerged and whether other measures should be developed; and</li> <li>▪ in relation to each NTER measure, make an assessment of its effects to date, and recommend any required changes to improve each measure and monitor performance.</li> </ul> <p>The NTER Review Board and the Expert Group will be supported by a secretariat which will provide project management support.</p> <p>The NTER Review Board is expected to provide the Australian Government with a final report by 30 September 2008.<sup>86</sup></p>
<p><b>11 June 2008</b> <i>Regional Partnership Agreement for Western Cape York Peninsula.</i></p>	<p>The Minister for Employment Participation announced Australian Government funding for the development and mentoring of Indigenous enterprises on the Western Cape York Peninsula.</p> <p>During a visit to Weipa today funding of nearly \$700,000 was announced. This will fund two senior positions at the Western Cape Chamber of Commerce over the next two years.</p> <p>The funding will allow the Chamber to recruit an Indigenous Economic Development Officer and an Indigenous Business Mentor/ Trainer. These positions will work with existing and emerging Indigenous businesses on the Western Cape to develop their capability and sustainability.<sup>87</sup></p>

86 Minister for Families, Housing, Community Services and Indigenous Affairs, 'NT Emergency Response Review Board' (Media Release, 6 June 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt\\_emergency\\_reponse\\_06jun08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt_emergency_reponse_06jun08.htm) (viewed 16 January 2009).

87 Minister for Employment Participation, 'Regional Partnership Agreement for Indigenous business growth' (Media Release, 11 June 2008). At <http://mediacentre.dewr.gov.au/mediacentre/oconnor/releases/regionalpartnershipagreementforindigenousbusinessgrowth.htm> (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>16 June 2008</b>  <i>The Stolen Generation Compensation Bill 2008 Inquiry Report released.</i></p>	<p>On 14 February 2008, the Stolen Generation Compensation Bill 2008, a private Senator's bill, was introduced into the Senate. On 12 March 2008, the Senate referred the Bill to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 16 June 2008.</p> <p>The Committee's report found that the primary purpose of the Bill was to address compensation for the stolen generations of Indigenous children in Australia. The Bill proposed a compensation model for ex gratia payments to be made to Aboriginal and Torres Strait Islander persons who were found to be eligible for such payments under the Bill.<sup>88</sup></p> <p>The Report contains four recommendations:</p> <ol style="list-style-type: none"> <li>1. The committee recommends that the Bill not proceed in its current form.</li> <li>2. The committee recommends that the Federal Government's stolen generation working group (comprising of stolen generation representatives from the National Sorry Day Committee and the Stolen Generations Alliance) be charged with the responsibility of monitoring the implementation of the recommendations of the <i>Bringing them home</i> report, and providing advice to government on the implementation of outstanding recommendations of that report by the end of 2008.</li> <li>3. The committee recommends that the Federal Government's 'closing the gap' initiative be extended to establish a National Indigenous Healing Fund to provide health, housing, ageing, funding for funerals, and other family support services for members of the stolen generation as a matter of priority. The committee recommends that the National Indigenous Healing Fund be incorporated within the 'closing the gap' initiative as an additional and discrete element of focus and funding.</li> <li>4. The committee recommends that the terms and conditions of the National Indigenous Healing Fund be determined through the Council of Australian Governments (COAG), and that its processes and practical application be decided after consultation with the stolen generation working group (comprising of stolen generation representatives from the National Sorry Day Committee and the Stolen Generations Alliance).<sup>89</sup></li> </ol>

88 Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generations Compensation Bill 2008 Report*, ch 1, s 1.3. At [http://www.aph.gov.au/senate/committee/legcon\\_ctte/stolen\\_generation\\_compensation/report/c01.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/report/c01.htm) (viewed 16 January 2009).

89 Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generations Compensation Bill 2008 Report*, ch 3. At [http://www.aph.gov.au/senate/committee/legcon\\_ctte/stolen\\_generation\\_compensation/report/b02.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/report/b02.htm) (viewed 16 January 2009).

Date	Event/summary of issue
<p><b>19 June 2008</b> <i>Additional funding for Aboriginal Legal Services.</i></p>	<p>The Australian Government announced the allocation of more than \$6.3 million in one-off funding for Aboriginal Legal Services (ALS) to help meet extra demand for legal assistance.</p> <p>The funding will provide:</p> <ul style="list-style-type: none"> <li>▪ \$2.75 million for the Aboriginal Legal Service of Western Australia;</li> <li>▪ \$515,000 to Aboriginal Legal Service (NSW and ACT);</li> <li>▪ \$800,000 to the Aboriginal and Torres Strait Islander Legal Service (Queensland South);</li> <li>▪ \$895,000 for South Australia's Aboriginal Legal Rights Movement;</li> <li>▪ \$140,000 for computer upgrades; and</li> <li>▪ \$900,000 for the Expensive Indigenous Cases Fund which allows any legal service to apply for extra funds for expensive or high profile cases.<sup>90</sup></li> </ul>
<p><b>21 June 2008</b> <i>Northern Territory Emergency Response Taskforce's Final Report</i></p>	<p>On the first anniversary of the Northern Territory Emergency Response, the Northern Territory Emergency Response Taskforce presents its Final Report to Government. The report documents the activities of the Taskforce, reports on the achievements of the Intervention over the previous 12 months, and makes a number of recommendations for future services for Indigenous peoples in the Northern Territory.</p> <p>The Final Report of the Taskforce is available online at: <a href="http://www.facsia.gov.au/nter/docs/reports/taskforce_report.htm">http://www.facsia.gov.au/nter/docs/reports/taskforce_report.htm</a></p>
<p><b>24 June 2008</b> <i>Eight new family support services commence.</i></p>	<p>Eight new family support services have been launched to support Indigenous families as part of a \$16.6 million Australian Government commitment to give Indigenous children a good start in life.</p> <p>The first eight locations, from a proposed 50 over the next four years, have been selected because they have a large Indigenous population and are often highly disadvantaged as well.</p> <p>The services – the Indigenous Parenting Support Services – will target families with children aged up to eight years old with a focus on children under the age of two. The Government will provide over \$1.2 million to the eight locations. A total of \$153,000 per year will be allocated to each site, covering the salaries of one full-time family support worker, one part-time worker and other administration costs.</p>

90 Minister for Home Affairs, 'Additional funding for Aboriginal Legal Services' (Media Statement, 19 June 2008). At <http://www.alp.org.au/media/0608/msha190.php> (viewed 16 January 2009).

Date	Event/summary of issue
	<p>The sites and their service providers are:</p> <ul style="list-style-type: none"> <li>▪ Blacktown NSW – the Anglicare Diocese of Sydney;</li> <li>▪ Wellington NSW – Aboriginal Corporation Health Services (WACHS);</li> <li>▪ Central Melbourne, Victoria – the Victorian Aboriginal Child Care Agency (VACCA);</li> <li>▪ South Brisbane, Qld – Kummara Association;</li> <li>▪ Port Adelaide, SA – Uniting Care Wesley Port Adelaide;</li> <li>▪ Banksia Grove, WA – Ngala Incorporated;</li> <li>▪ Launceston, Tasmania – the Tasmanian Aboriginal Child Care Association (TACCA); and</li> <li>▪ Gungahlin, ACT – The Smith Family.<sup>91</sup></li> </ul>
<p><b>27 June 2008</b>  <i>National Policy Commission on Indigenous Housing convenes first meeting.</i></p>	<p>The initial tasks of the National Policy Commission on Indigenous Housing have included assessing remote Indigenous housing data to identify gaps, assessing the capacity of existing government programs to address remote Indigenous housing needs, and identifying tangible policy objectives for government in both remote and urban and regional contexts.</p> <p>2006 census data and 2006 Community Housing and Infrastructure Need Survey data indicates that of the 22,000 Indigenous households in remote or very remote Australia:</p> <ul style="list-style-type: none"> <li>▪ around 7,000 or over 30% of these households are overcrowded;</li> <li>▪ almost a third of the 15,000 houses managed by Indigenous Housing Organisations require repairs or replacement; and</li> <li>▪ almost 3,000 Indigenous peoples are homeless.<sup>92</sup></li> </ul>
<p><b>27 June 2008</b>  <i>New evaluation reports on Indigenous Business Australia and Family Violence Programs.</i></p>	<p>The Australian Government released two evaluation reports on Indigenous Business Australia (IBA) and two Indigenous-specific family violence programs, the Family Violence Partnership Program and the Family Violence Regional Activities Program.</p>

91 Minister for Families, Housing, Community Services and Indigenous Affairs, 'New service for Indigenous families gets underway' (Media Release, 24 June 2008). At [http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/indigenous\\_families\\_24june08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/indigenous_families_24june08.htm) (viewed 16 January 2009).

92 Prime Minister and Minister for Families, Housing, Community Services and Indigenous Affairs, 'National Policy Commission on Indigenous Housing Convenes for First Meeting' (Media Release, 27 June 2008). At [http://www.pm.gov.au/media/Release/2008/media\\_release\\_0332.cfm](http://www.pm.gov.au/media/Release/2008/media_release_0332.cfm) (viewed 16 January 2009).

Date	Event/summary of issue
	<p>The IBA program evaluation examines the manner in which IBA seeks to create wealth in Indigenous communities, support Indigenous businesses and increase the rate of home ownership among Indigenous households. The evaluation highlights the diversity of IBA's partnerships with Indigenous peoples, their communities and the mainstream business community.</p> <p>The family violence program evaluation report highlights the work that the Department of Families, Housing, Community Services and Indigenous Affairs has undertaken to address the family violence and notes that many improvements have been made since the completion of the evaluation.<sup>93</sup></p>

93 Minister for Finance and Deregulation, 'New evaluation reports Indigenous Business Australia and Family Violence Programs' (Media Release, 27 June 2008). At [http://www.financeminister.gov.au/media/2008/mr\\_222008.html](http://www.financeminister.gov.au/media/2008/mr_222008.html) (viewed 16 January 2009).



## Appendix 2

# A statistical overview of Aboriginal and Torres Strait Islander peoples in Australia

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1. Introduction
2. Population figures
3. Indigenous households and families
4. Language and culture
5. Health
6. Income
7. Employment
8. Education
9. Housing and homelessness
10. Indigenous peoples and criminal justice systems
11. Child protection
12. The economic cost of inequality

### 1. Introduction

This collection of statistics has been chosen to highlight the current situation of Aboriginal and Torres Strait Islander peoples in Australia (hereon referred to as Indigenous peoples) across a range of indicators including: health; education; employment; housing; and contact with criminal justice and welfare systems. Where possible, data is also provided that identifies:

- absolute change in the situation of Indigenous peoples over the past five and ten years; and
- relative change in relation to the non-Indigenous population over the past five to ten years.

While reducing people and their experiences to percentages and numbers is problematic, statistics are useful as indicators of trends over time and disparities, as well of similarities, between Indigenous peoples and the non-Indigenous population.

I also note that the statistics reproduced here are not exhaustive of data available on Indigenous peoples in Australia.

The main sources of information used here are the national censuses undertaken by the Australian Bureau of Statistics (ABS), particularly the 2001 and 2006 Census; as well as the following ABS Indigenous specific surveys:

- *National Aboriginal and Torres Strait Islander Social Survey* (2002) (NATSISS 2002) sample size 9,400 persons;<sup>1</sup> and

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1 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey 2002*, ABS cat no 4714.0 (2004).

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- *National Aboriginal and Torres Strait Islander Health Survey (2004–05)* (NATSIHS 2004–5), sample size 10,439 persons.<sup>2</sup>

Data from these and other sources (including administrative data sets) is drawn together in the Australian Institute of Health and Welfare and ABS biennial publication *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, the latest being released in May 2008.<sup>3</sup> This comprehensive publication is acknowledged as the source of much of the information presented here.

Statistics on Indigenous peoples are subject to a range of data quality concerns. In addition to cultural considerations in relation to statistical matters (such as concepts, definitions, collection practices), data quality issues arise from the relatively small size of the Indigenous population in comparison with the total population, the dispersion of the Indigenous population, particularly across remote areas of Australia, and the way in which Indigenous persons are identified in statistical collections.<sup>4</sup> When appropriate, these issues are explained here.<sup>5</sup>

## 2. Population figures

Aboriginal people were first counted as citizens in the 1971 Census. Since then, censuses have shown a significant increase in people identifying as Aboriginal and/ or Torres Strait Islander peoples:

- Between the 1991 and 1996 Census there was a 33% increase recorded in the numbers of Indigenous peoples.
- Between the 1996 and 2001 Census there was a 16% increase.
- Between the 2001 and 2006 Census there was an 11% increase.<sup>6</sup>

The increases in the Indigenous population cannot be accounted for by the birth rate alone. The ABS attributes the increase to a growing propensity of people to identify as Aboriginal and/ or Torres Strait Islander, and the greater efforts made to record Indigenous status in the censuses.<sup>7</sup>

Because of the recorded increases in the number of Indigenous peoples, the ABS has warned that comparisons made between two censuses must be made with caution. They recommend comparing percentages from two censuses, rather than directly comparing counts or numbers.<sup>8</sup>

Despite the increases in the numbers of people identifying as Indigenous in censuses, however, there are still believed to be significant undercounts occurring. In the 2006

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2 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005).

3 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008).

4 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians 2001*, ABS cat no 4705.0 (2002) p 7–15.

5 For further information, see also Australian Human Rights Commission, *Face the Facts* (2008). At: [http://www.humanrights.gov.au/racial\\_discrimination/face\\_facts/index.html](http://www.humanrights.gov.au/racial_discrimination/face_facts/index.html) (viewed 22 January 2009).

6 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 12.

7 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 12; Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2001*, ABS cat no 4713.0 (2001) p 12.

8 Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, ABS cat no 4704.0 (2003) p 245.

Census, Indigenous status is unknown for 1,133,466 people, comprising 5.7% of the total number of people surveyed.<sup>9</sup>

Because some of these people will be Indigenous, the ABS calculates what it calls 'experimental estimates' of the true number of Indigenous peoples.<sup>10</sup> It is important to distinguish actual counts from the experimental estimates when considering the size of the Indigenous population.

## 2.1 Size and characteristics of the Indigenous population

In the 2006 Census, 455,028 people identified themselves as being of Aboriginal and/or Torres Strait Islander origin, comprising 2.3% of the total population.<sup>11</sup>

There were approximately 409,729 people of Aboriginal origin (90% of the total) and 29,239 of Torres Strait Islander origin (6%). A further 19,552 people (4%) identified as of both Aboriginal and Torres Strait Islander origin.<sup>12</sup>

As explained above, due the undercount believed to occur in the Census the ABS has estimated that the Indigenous population in 2006 numbered 517,174, or approximately 2.5% of the total Australian population.<sup>13</sup>

## 2.2 Growth of the Indigenous population

While an overall decline in the Indigenous fertility rate has been reported since the 1960s, in 2006 the rate was still higher than for the non-Indigenous population at 2.1 babies per Indigenous woman compared to 1.8 babies per non-Indigenous woman.<sup>14</sup>

The ABS notes that the fertility of Indigenous women may be underestimated because of the incomplete identification of Indigenous status of the mother in birth registrations. Further, because Indigenous babies are born to non-Indigenous women (with an Aboriginal or Torres Strait Islander father), estimates of population growth based exclusively on the fertility of Indigenous women results in an underestimate of the actual growth of the Indigenous population.<sup>15</sup>

Teenage births are more common among Indigenous women than among other women. In 2006 the teenage birth rate among Indigenous women rose to be more than five times the overall Australian teenage birth rate.<sup>16</sup> Teenage pregnancies are associated with low birth weight babies.<sup>17</sup>

9 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 10.

10 Australian Bureau of Statistics *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 15.

11 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 12.

12 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 19, table 2.2.

13 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 9.

14 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 79.

15 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 79.

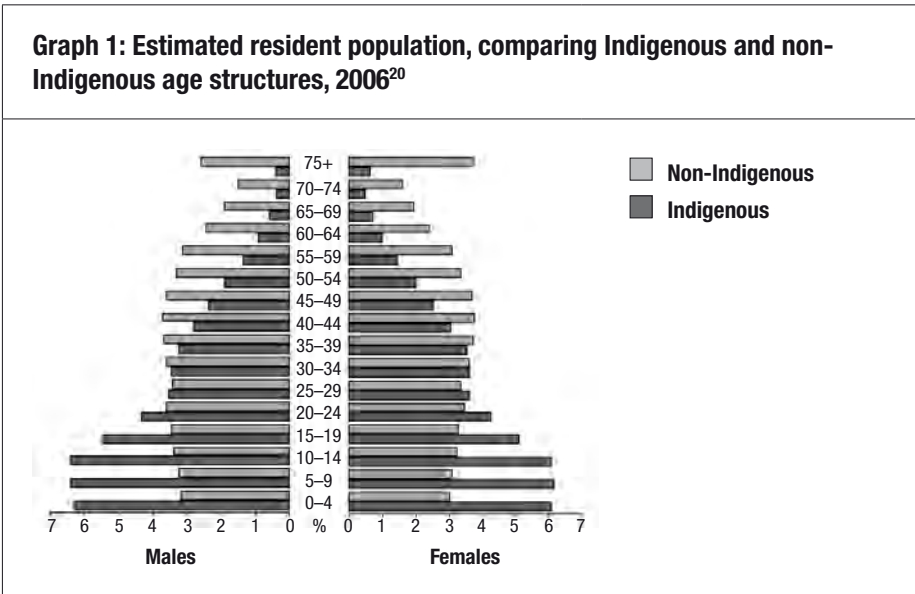
16 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 80.

17 Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2005*, ABS cat no 4704.0 (2005) p 74.

### 2.3 Age structure of the Indigenous population and the cohort of young Indigenous peoples

As illustrated by Graph 1 below, the Indigenous population has a different age structure to the rest of the Australian population. In common with many other developed countries, the non-Indigenous population of Australia is ageing, whereas Indigenous peoples are facing increased growth in younger age groups.

In 2006, the median age was 21 years for Indigenous Australians, and 37 years for the non-Indigenous population. Thirty eight (38) percent of the Indigenous population were under 15 years of age compared with 19% of the non-Indigenous population.<sup>18</sup> Indigenous persons aged 65 years and over comprised 3% of the total Indigenous population in 2006.<sup>19</sup>



### 2.4 Where Indigenous peoples live

In 2006, over half of the total Indigenous population lived in New South Wales and Queensland (29% and 28% of the total Indigenous population respectively). Despite this, Indigenous peoples make up a small minority of the total population of these States (2% and 3.5% respectively). In the Northern Territory by contrast, while total numbers are relatively small, Indigenous peoples constitute 32% of the total population.<sup>21</sup>

Table 1 below details the percentage of the total number of Indigenous peoples that lives in each State and Territory, and the proportion of each State and Territory's population that is Indigenous.

18 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 14–15.  
 19 Australian Bureau of Statistics, *Yearbook 2008*, ABS cat no 1301.0 (2008) p 198.  
 20 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 15, (unnumbered graph).  
 21 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 14.

	<b>Percentage of the total Indigenous population living in a State or Territory</b>	<b>Percentage of the State or Territory's total population that is Indigenous</b>
NSW	28.7	2.2
Vic	6.0	0.6
Qld	28.3	3.6
SA	5.0	1.7
WA	15.1	3.8
Tas	3.3	3.4
NT	12.9	31.6
ACT	0.8	1.2

The majority of Torres Strait Islanders (86.2%) live on mainland Australia, with 13.8% living in the Torres Strait region. In 2006, 64% of the Torres Strait Islander population lived in Queensland.<sup>23</sup>

#### **(a) Remoteness**

With reference to the categories of the Australian Standard Geographical Classification Remoteness Structure, in the 2006 Census almost one third of the estimated Indigenous population resided in Major Cities (32%); 21% lived in Inner Regional areas; 22% in Outer Regional areas; 10% in Remote areas and 16% in Very Remote areas.

In contrast, with the non-Indigenous population there was a much higher concentration in Major Cities (69%) with less than 2% living in Remote and Very Remote areas.<sup>24</sup>

### **3. Indigenous households and families**

An Indigenous household is defined by the ABS as being one in which an Indigenous person was resident and present on census night. These are further classified as family, multi-family, group and lone person households.<sup>25</sup>

In the 2006 Census there were 166,668 Indigenous households recorded. Of these, 76% were one family households, of the remaining 24%, 5% were multi-family households, and 5% were group households. Approximately 14% were lone person households.<sup>26</sup>

22 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 16.

23 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 12.

24 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 13.

25 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 27.

26 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 27.

Couples with dependent children comprise 40% of Indigenous families, whereas 30% were one parent families (as opposed to 10% of non-Indigenous families) and 33% were couples without children (compared with 53% of non-Indigenous couples).<sup>27</sup>

Indigenous peoples are more likely to live in one or multi-family households than non-Indigenous peoples (81% compared with 68%) and less likely to live in lone person households (14% compared with 23%).<sup>28</sup>

Living arrangements vary according to remoteness. For example, multi-family households increase with remoteness whereas one parent families tend to live in major cities.<sup>29</sup>

### 4. Language and culture

Indigenous cultures today reflect both traditional elements and the influence of non-Indigenous cultures. The 2006 Census reported:

- 86% of Indigenous respondents reported speaking only English at home, which is about the same as the non-Indigenous population (83%);
- 12% of Indigenous respondents reported speaking an Indigenous language at home; with three quarters of those recording they were also fluent in English;
- Many Indigenous peoples are bilingual; however, the pattern varies with geographical location with 56% of respondents living in remote areas reported speaking an Indigenous language, compared with one per cent in urban centres;
- Older Indigenous peoples (over 45 years) are more likely to speak an Indigenous language than younger Indigenous peoples. (Of those Indigenous peoples aged 45 years and over, 13% speak an Indigenous language, compared with 10% of 0–14 year olds);
- Indigenous languages are more likely to be spoken in the centre and north of Australia than in the south.<sup>30</sup>

The Indigenous social surveys indicate Indigenous peoples are maintaining their links to Indigenous cultures. The 1994 National Aboriginal and Torres Strait Islander Survey (the predecessor of the NATSISS 2002) reported approximately 60% of Indigenous respondents identified with a clan, tribal or language group.<sup>31</sup> The NATSISS 2002 shows a similar proportion (just over half) of Indigenous respondents continued to identify with a clan, tribal or language group despite there being a decline in the proportion (29% to 22%) of people who lived in homelands and traditional country over the period of the social surveys.<sup>32</sup>

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27 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 28.

28 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 27.

29 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 27.

30 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 35–37.

31 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Survey 1994 – Detailed Findings*, ABS cat no 4190.0 (1995) p 4.

32 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005).

## 5. Health

### 5.1 Self reported health status

In the NATSIHS 2004–05:

- 43% of Indigenous respondents aged 15 years and over reported their health as very good or excellent;
- 35% reported their health as being good; and
- 22% reported their health as fair or poor.

After adjusting for differences in the age structures of the Indigenous and non-Indigenous populations, Indigenous Australians were twice as likely as non-Indigenous Australians to report their health as fair or poor in 2004–05.

Indigenous Australians aged 15 years and over in non-remote areas were more likely than those in remote areas to report fair or poor health (23% compared with 19%).<sup>33</sup>

### 5.2 Life expectation and mortality

Under the life expectation estimation formula adopted by the ABS in 2003,<sup>34</sup> Indigenous males' life expectation was estimated to be 59.4 years over 1996–2001, while female life expectation was estimated to be 64.8 years: a life expectation inequality gap when compared to the general Australian population of approximately 17 years for the same five year period. The ABS has not released a life expectation estimate for Indigenous peoples for the years 2002 on.<sup>35</sup>

Indigenous peoples' life expectation appears to be similar to that of people in developing countries. Although international comparisons should be made with some caution because of the different formulae with which life expectation is calculated between jurisdictions, with reference to the 2005 United Nation's Human Development Index Indigenous peoples appear to have a life expectation approximating that of the people of Turkmenistan (62.4 years).<sup>36</sup>

The gap in life expectation between Indigenous and non-Indigenous Australians exists in part because of the dramatic increase in life expectation enjoyed by the non-Indigenous population over the past century. Over the period 1890 – 1997, for example, it has been estimated that, for the non-Indigenous population, women's life expectancy increased around 26 years; while for males, 28 years. In contrast, while figures are not available, much smaller gains appear to have occurred in the Indigenous population contributing to the development of a 17 year life expectation gap.<sup>37</sup>

In 2006, the median age at death for the general population in Australia was 77.3 years for males and 83.3 years for females. This represents an increase of 6.2 years and 5.7 years for males and females respectively since 1986 alone.<sup>38</sup>

33 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 9.

34 There are long-standing issues pertaining to the identification of an Aboriginal and/or Torres Strait Islander person as the deceased on death certificates that prevent definitive statements being made about Indigenous peoples' life expectation, hence the reliance on life expectation estimation formulas to arrive at figures. In 2006, it was estimated that only 55% of the deaths of Indigenous peoples were correctly identified. Australian Bureau of Statistics, *Deaths 2006*, ABS cat no 3320.0 (2006) p 69, Table 9.1.

35 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 154.

36 United Nations Development Program, *Human Development Report 2005* (2005) p 220, Table 1.

37 F Baum, *The New Public Health* (2002) p 198.

38 Australian Bureau of Statistics, *Deaths 2006*, ABS cat no 3320.0 (2006) p 9.

Other statistics show remarkable reductions in the impact of diseases in the general population. These statistics demonstrate that significant improvements in the health and life expectation of population groups can occur within decades. For example, in the general population:

- death rates from cardiovascular disease have fallen 30% in Australia since 1991, and 70% in the last 35-years;<sup>39</sup> and
- the infant mortality rate in 2006 was 4.7 infant deaths per 1,000 live births – 46% lower than the 1986 rate which was 8.8 deaths per 1,000 live births.<sup>40</sup>

Because of these rapid health gains in the general population, and despite some significant health gains being made by Indigenous peoples in the 1970s and 1980s, the relative health status of the two population groups is marked by a significant equality gap that has remained static or even grown wider across a number of indicators as set out below in the text under various sub-headings.

### **Text Box 1: International comparisons in Indigenous peoples' life expectancy**

Approximately 30 years ago, life expectation for Indigenous peoples in Canada, New Zealand and the United States of America was, like Indigenous peoples in Australia today, significantly lower than that of the respective non-Indigenous populations of those countries.

However, significant gains in life expectation by Native Americans and Canadians and the Maori have been made in recent decades. Today, Australia has fallen significantly behind in improving the life expectation of its Indigenous peoples. Although comparisons should be made with caution (because of the way different countries calculate life expectation) data from the late 1990s suggests Indigenous males in Australia live between 8.8 and 13.5 years less than Indigenous males in Canada, New Zealand and the USA; and Indigenous females in Australia live between 10.9 and 12.6 years less than Indigenous females in these countries.<sup>41</sup>

### **(a) Mortality**

For the period 2001–05, among the residents of Queensland, Western Australia, South Australia and the Northern Territory (jurisdictions where the data is deemed reliable), deaths recorded as being of an Indigenous person accounted for 3.2% of all deaths, higher than their presence as a percentage of the total population (as noted, estimated at 2.5%).<sup>42</sup>

In Queensland, Western Australia, South Australia and the Northern Territory combined, approximately 75% of Indigenous males and 65% of Indigenous females died before the age of 65 years. In contrast, in the non-Indigenous population 26% of males and 16% of females died aged less than 65 years.<sup>43</sup>

39 Australian Bureau of Statistics, *Australian Social Trends 2002*, ABS cat. no. 4102.0 (2002) p 83–85.

40 Australian Bureau of Statistics, *Deaths 2006*, ABS cat no 3320.0 (2006) p 8.

41 I Ring and D Firman, 'Reducing Indigenous mortality in Australia: lessons from other countries', *Medical Journal of Australia* (1998) 169, p 528–533.

42 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 156–7.

43 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 156–7.

For the period 2001–05, Indigenous infant deaths represented 6.4% of total Indigenous male deaths and 5.7% of total Indigenous female deaths compared with 0.9% and 0.8% of the total for non-Indigenous male and female infant deaths.<sup>44</sup>

### (b) Years of life lost

Years of Life Lost (YLL) is an indicator of premature mortality.

A 2003 study on the burden of disease and injury among Indigenous peoples found there were an estimated 51,475 YLL due to disease and injury for the Indigenous population, or approximately 4% of the total YLL for disease and injury for the total Australian population.<sup>45</sup> This is significantly higher than their presence as a percentage of the total population.

Cardiovascular disease was the leading cause of years of life lost accounted for around one-quarter of total YLL among Indigenous peoples; followed by cancer (14% of YLL); unintentional injuries (11%), intentional injuries (9%) and diabetes (7%).<sup>46</sup>

## 5.3 Infant and child health

### (a) Low birth weight infants

Indigenous infant and child health is significantly poorer than that of non-Indigenous infants and children. A 'low birth weight baby' weighs less than 2,500 grams at birth<sup>47</sup> indicating, among other things, foetal malnutrition. There is a growing body of evidence that suggests a malnourished foetus will program its body in a way that will incline it to chronic diseases later in life.<sup>48</sup>

Approximately twice as many low birth weight infants were born to Indigenous women compared to those born to non-Indigenous women over 2001 and 2004.<sup>49</sup> The ABS reported in 2005 that since 1991 there appears to be no change in both the rates of low birth-weight infants being born to Indigenous women and the mean birth weights of those infants.<sup>50</sup>

### (b) Infant mortality

After significant reductions to the Indigenous infant mortality rate in the 1970s and 1980s, there was a levelling out of the rate in the mid 1990s. The decline is believed to have halted because of the generally poorer health of Indigenous mothers; their exposure to risk factors; and the poor state of health infrastructure in which infants were raised.<sup>51</sup>

The infant mortality rate is expressed as the number of deaths in the first year per 1,000 births in a population. The ABS concluded in 2001 that no reliable Indigenous infant mortality rate national trend (either for better or worse) was identifiable, largely

44 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 156–7.

45 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 159.

46 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 159.

47 Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2005* (2005) p 79.

48 National Health and Medical Research Council, *Nutrition in Aboriginal and Torres Strait Islander Peoples, an information paper* (2000) p 21.

49 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 83.

50 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 84, Graph 6.6.

51 N Thomson, 'Responding to our "Spectacular Failure"', in N Thompson, *The Health of Indigenous Australians*, (2005) p 490.

because of the poor quality of data.<sup>52</sup> In jurisdictions where the data is deemed reliable, for the period 2001 to 2005, approximately two to three times the number of Indigenous infants died before their first birthday, as non-Indigenous infants.<sup>53</sup>

### 5.4 Chronic diseases

Chronic diseases, and in particular cardiovascular disease, are the biggest single killers of Indigenous peoples and an area where the Indigenous and non-Indigenous health equality gap is most apparent.

The rates of death from the five main groups of chronic diseases compared to the non-Indigenous population over 2001–05 is set out in Table 2 as a Standardised Mortality Rate (SMR). The SMR is calculated by dividing recorded Indigenous deaths by expected Indigenous deaths (with the latter based on the age, sex and cause specific rates for non-Indigenous Australians).<sup>54</sup>

<b>Cause of Death</b>	<b>Males SMR</b>	<b>Females SMR</b>
Diseases of the circulatory system	3.2	2.7
Neoplasms (including cancer)	1.5	1.6
Endocrine, nutritional and metabolic diseases	7.5	10.1
Diabetes	10.8	14.5
Diseases of the respiratory system	4.3	3.6
Diseases of the digestive system	5.8	5.1

### 5.5 Communicable diseases

Data highlighting the significantly higher rates of communicable diseases among Indigenous peoples compared to the non-Indigenous population is presented here from the National Notifiable Diseases Surveillance System. The ratio is calculated by dividing reported Indigenous notifications divided by expected Indigenous notifications. Expected notifications are calculated based on the age, sex and disease-specific rates of other Australians.<sup>56</sup>

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52 Australian Bureau of Statistics, *Deaths 2001*, ABS cat. no.3320.0 (2002) p 23.  
 53 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 94.  
 54 Standardised mortality rate is observed as Indigenous deaths divided by expected Indigenous deaths, based on the age, sex and cause specific rates for non-Indigenous Australians: Australian Institute of Health and Welfare, *Australia's Health 2008*, ABS cat no 8903.0 (2008) p 76.  
 55 Australian Institute of Health and Welfare, *Australia's Health 2008*, ABS cat no 8903.0 (2008) Table 3.4.  
 56 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 130.

**Table 3: Communicable diseases in Indigenous peoples reported as multiples of the rates in the non-Indigenous population (2004–05)<sup>57</sup>**

Communicable disease	Detected in Indigenous peoples at...
Hepatitis A	11.7 times the rate detected in the non-Indigenous population
Hepatitis B	5.4 times the rate detected in the non-Indigenous population
Meningococcal infection	7.8 times the rate in the non-Indigenous population
Salmonellosis	4.3 times the rate in the non-Indigenous population
Chlamydia Infection	7.9 times the rate detected in the non-Indigenous population
Tuberculosis	1.6 times the rate in the non-Indigenous population

## 5.6 Eye and ear health

Indigenous peoples reported having cataracts and either complete or partial blindness at higher rates than non-Indigenous people. Within the Indigenous population, those living in non-remote areas were more likely to report eye and sight problems (32%) than those living in remote areas (25%).<sup>58</sup>

Otitis media is a common childhood disease of the inner ear and easily treated. Untreated recurrence of chronic otitis media is often characterised by a perforated eardrum, which can lead to hearing loss and even deafness, impacting on a child's ability to learn, and gain employment later in life.

In 2004–05, rates of otitis media were three times as high among Indigenous children aged 0–14 years as non-Indigenous children. In 2004–05, a higher proportion of Indigenous peoples than non-Indigenous people reported ear and hearing problems across all age groups, except for those aged 55 years and over.<sup>59</sup>

## 5.7 Social and emotional well being

The NATSIHS 2004–5 was the first Indigenous-specific survey by the Australian Bureau of Statistics that aimed to measure the emotional and social health of Indigenous adults. In this, more than half the adult Indigenous population reported being happy (71%), calm and peaceful (56%), and/ or full of life (55%) all or most of the time. Just under half (47%) said they had a lot of energy all or most of the time.<sup>60</sup> And Indigenous peoples in remote areas were more likely to report having had these positive feelings all or most of the time, than were Indigenous peoples living in non-remote areas. Conversely, about 15% of the total number of adults who were asked felt these things

57 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 121, Table 7.34.

58 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 133.

59 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 134.

60 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005) p 3.

only a little of the time, or none of the time. Results again were better for Indigenous peoples in remote areas.<sup>61</sup>

The NATSIHS 2004–5 also included five questions designed to highlight psychological distress. Responses showed that almost one in ten Indigenous adults reported feeling nervous all or most of the time. When asked how often they felt without hope, 7% said that they had this feeling all or most of the time. Similarly, 7% said that they felt so sad that nothing could cheer them up, all or most of the time. A higher proportion of the Indigenous population reported feeling restless (12%) and/ or that everything was an effort all or most of the time (17%).<sup>62</sup>

The Western Australian Aboriginal Child Health Survey collected data on approximately 5,000 Indigenous children over 2000–01. It reported that one in four Aboriginal children were at high risk of developing serious emotional or behavioural difficulties. This compares to about 1 in 6 or 7 of non-Aboriginal children.<sup>63</sup>

### 5.8 Mental health

Data on hospitalisations for mental and behavioural disorders provide a measure of the use of hospital services by those with problems related to mental health. In 2005–06 there were more hospitalisations of Indigenous males and females than expected based on the rates for other Australians for most types of mental and behavioural disorders.<sup>64</sup> In particular, hospitalisations for ‘mental and behavioural disorders due to psychoactive substance use’ were almost five times higher for Indigenous males and around three times higher for Indigenous females.<sup>65</sup>

Hospitalisation rates for intentional self-harm may also be indicative of mental illness and distress. In 2005–06, Indigenous Australians were three times more likely to be hospitalised for intentional self-harm than other Australians.<sup>66</sup>

### 5.9 Health risk factors

#### (a) Tobacco smoking

Tobacco smoking was the leading cause of the burden of disease and injury for Indigenous Australians in 2003, accounting for 12.1% of the total burden and 20% of all deaths.<sup>67</sup> In 2004–05, half (50%) of the adult Indigenous population were current daily (or regular) smokers, approximately twice the rate in the non-Indigenous population.<sup>68</sup>

While smoking rates have decreased slightly for the total Australian population over the ten years to 2004–05, there has been no significant change in smoking rates for

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61 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005) p 3.

62 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005) p 3.

63 S Zubrick, S Silburn, D Lawrence and others, *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research (2005) p 30.

64 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 111.

65 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 111.

66 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 111.

67 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 139.

68 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 139.

the Indigenous population in this period. For both men and women, smoking was more prevalent among Indigenous adults than non-Indigenous adults in every age group.<sup>69</sup>

### (b) Obesity

High body mass and obesity was the second leading cause of the burden of illness and injury among Indigenous Australians in 2003, accounting for 11% of the total burden of disease and 13% of all deaths.<sup>70</sup>

In 2004–05, it was reported that 38% of Indigenous peoples aged 15 years and over were a healthy weight, 28% were overweight, and 29% were obese. Overall, more than half (57%) of Indigenous peoples aged 15 years and over were overweight or obese.<sup>71</sup>

Between 1995 and 2004–05, rates of overweight/ obesity among Indigenous peoples aged 15 years and over in non-remote areas increased from 48% to 56%.<sup>72</sup>

Overall, rates of overweight/ obesity for Indigenous and non-Indigenous men are similar. In contrast Indigenous women are more than one and half times more likely to be overweight/ obese than non-Indigenous women.<sup>73</sup>

### (c) Excessive alcohol consumption

In 2003, alcohol was associated with 7% of all deaths and 6% of the total burden of disease for Indigenous Australians. Excessive alcohol consumption also accounted for the greatest proportion of the burden of disease and injury for young Indigenous males (aged 15–34 years) and the second highest (after intimate partner violence) for young Indigenous females.<sup>74</sup>

In the NATSIHS 2004–5, Indigenous peoples aged 18 years and over were found to be more likely than non-Indigenous people to abstain from drinking alcohol. Of those who did consume alcohol in the week prior to the survey, one in six Indigenous adults (16%) reported long-term (or chronic) risky/ high risk alcohol consumption, up from 13% in 2001. In non-remote areas, the proportion of Indigenous adults who drank at chronic risky or high risk levels increased from 12% in 2001 to 17% in 2004–05.<sup>75</sup>

While rates of risky/ high risk drinking were similar for Indigenous peoples in remote and non-remote areas, people in remote areas were nearly three times as likely as those in non-remote areas to report never having consumed alcohol (18% compared with 6%).<sup>76</sup>

### (d) Petrol sniffing

Petrol sniffing is reported in many Indigenous communities across Australia, but it is a particular problem in central Australian Indigenous communities. While it is not a major determinant of poor health in Indigenous Australians nationally, it is included here

69 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 139–140.

70 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 144.

71 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 144.

72 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 144.

73 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 145.

74 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 140.

75 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 141.

76 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 141.

because of the public interest shown in petrol sniffing and Indigenous communities following media attention to the subject in recent years.

Where it occurs, petrol sniffing is also associated with a range of health and social harms including increased violence, acquired brain injury, property damage, child abuse and neglect, dispossession of Elders and theft.<sup>77</sup>

It is difficult to obtain definite figures on the numbers of people engaging in petrol sniffing. However, when looking at trends from various reports, it appears that over 2006–08 the incidence of petrol sniffing in central Australia has reduced significantly coincident with the roll out of Opal fuel across central Australia.

Across reports there appears to have been a drop from approximately 600 to 85 sniffers in central Australia with a drop from 178 to 80 sniffers on the Anangu Pitjantjatjara Yankunytjatjara Lands also reported over 2005–08.<sup>78</sup>

### 5.10 Disability

In the 2006 Census of Population and Housing, a total of 19,600 Indigenous peoples (approximately 4% of the total Indigenous population) were recorded as requiring assistance with core function activities (self-care, mobility and/ or communication) on a consistent basis. The level of assistance required by the Indigenous population was twice as high as that required by the overall Australian population.<sup>79</sup>

According to the NATSISS 2002, due to differences in the way disability data were collected in remote and non-remote areas, comparisons with the non-Indigenous population are limited to those Indigenous respondents living in non-remote areas. When the effects of age differences were removed, the disability rate among Indigenous respondents was 1.4 times higher than among the non-Indigenous population.<sup>80</sup>

## 6. Income

Estimates of household income are adjusted by the ABS according to ‘equivalence factors’ in order to recognise the impact of different household compositions and different household sizes.<sup>81</sup>

In the 2006 Census, the mean equivalised gross household income for Indigenous persons was \$460 per week, which amounted to 62% of the rate for non-Indigenous Australians (\$740 per week).<sup>82</sup>

For Indigenous persons, income levels generally decline with increased geographic remoteness. In the 2006 Census, in major cities the average equivalised incomes

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77 Department of Families, Housing, Community Services and Indigenous Affairs, *Review of the First Phase of the Petrol Sniffing Strategy* (2008). At [http://www.facsia.gov.au/indigenous/petrol\\_sniffing\\_strategy\\_review/p02.htm](http://www.facsia.gov.au/indigenous/petrol_sniffing_strategy_review/p02.htm) (viewed 19 January 2009).

78 Department of Families, Housing, Community Services and Indigenous Affairs; Department of Health and Ageing; and others, *Submission to the Senate Inquiry into Petrol Sniffing and Substance Abuse in Central Australia*, 22 August 2008, p 8. At [http://www.aph.gov.au/SENATE/COMMITTEE/clac\\_ctte/petrol\\_sniffing\\_substance\\_abuse08/submissions/sub14.pdf](http://www.aph.gov.au/SENATE/COMMITTEE/clac_ctte/petrol_sniffing_substance_abuse08/submissions/sub14.pdf) (viewed 19 January 2009).

79 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 55.

80 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 55.

81 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 81.

82 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 103.

for Indigenous persons was 69% of the corresponding income for non-Indigenous persons. This declined to approximately 40% in remote areas.<sup>83</sup>

Between 2001 and 2006 the average equivalised gross household income for Indigenous persons increased by 9% (after adjustment for inflation) which was the same increase for non-Indigenous people.<sup>84</sup>

In 2006, the median weekly gross individual income for Indigenous peoples was \$278, this represented 59% of the median weekly gross individual income for non-Indigenous peoples (\$473).<sup>85</sup>

## 7. Employment

### 7.1 Participation in the labour force

The census data shows slight but significant improvements in Indigenous participation in the labour force over 2001–06.

In the 2006 Census, 55% of Indigenous peoples aged 15 years and over were participating in the work force (i.e. were engaged in mainstream employment, participating in CDEP or unemployed) up from 52% in 2001.<sup>86</sup>

The labour force participation rate for the non-Indigenous population was 63% in 2001 compared with 65% in 2006. When adjusted to include only people aged 15–64 years, the disparity in labour force participation widens further. In 2001 there were 54% of Indigenous peoples in this age group in the labour force compared with 73% of the non-Indigenous population. In 2006, 57% of the Indigenous population in this age group was participating in the labour force compared with 76% of the non-Indigenous population.<sup>87</sup>

Labour force participation rates for Indigenous peoples declines with remoteness, with a 57% participation rate in major cities compared with 46% in very remote areas.<sup>88</sup>

Nationally, 46% of all Indigenous peoples aged 15–64 years were not in the labour force in 2001. This figure dropped to 43% in 2006. (This indicates that they were not actively engaged in the labour market, for reasons including carer responsibilities, illness, disability or lack of market opportunities.) In 2002, 27% of the non-Indigenous population in the same age group were not participating in the labour force, while in 2006 this figure dropped to 24%.<sup>89</sup>

### 7.2 Employment and unemployment

The unemployment rate is the number of people unemployed expressed as a proportion of the total labour force. The ABS does not classify participation in the CDEP scheme as unemployment. The CDEP Scheme enables participants to earn the equivalent of

83 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 103.

84 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 104.

85 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 107.

86 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2001*, ABS cat no 4713.0 (2001) p 65; Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 80.

87 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 80.

88 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 66.

89 Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 81.

unemployment benefits with some extra payment for undertaking work and training in activities managed by local Indigenous community organisations.

Within these parameters, the census data shows slight but significant reductions in Indigenous unemployment over 2001–06, and from 1996 – 2001. In the 2006 Census, the unemployment rate for Indigenous peoples was 16%, whereas in 2001, the unemployment rate for Indigenous peoples was 20%. The rate in 1996 was 23%.

In 2006, 14,200 Indigenous CDEP participants identified themselves in the census. Compared with all Indigenous peoples who were employed, Indigenous peoples identified as CDEP participants were:

- twice as likely to work part time (75% compared with 39%);
- more likely to report working in a low skilled occupation (78% compared with 60%); and
- one third as likely to report having a non-school qualification (13% compared with 37%).<sup>90</sup>

## 8. Education

Educational attainment among Indigenous peoples continues to improve. Between 2001 and 2006, the proportion of Indigenous peoples aged 15 years and over who had completed Year 12 increased from 20% to 23%. There was also an increase in the proportion of people who had completed a non-school qualification (20% to 26%).

Higher educational attainment was associated with better employment prospects and higher income in 2006. The NATSIHS 2004–5 results also demonstrate that higher levels of schooling were also linked with improved health outcomes.

### 8.1 School retention

The National Schools Statistics Collection showed that, in 2007, the apparent retention rate for Indigenous full-time students from Year 7/8 to Year 10 was 91% and to Year 12 was 43%.<sup>91</sup>

Indigenous retention to Year 10 and beyond has steadily increased over the last 10 years. This trend is particularly evident at the Year 11 level, where the apparent retention rate from Year 7/8 rose from 52% in 1998 to 70% in 2007.<sup>92</sup>

While Indigenous retention rates remain considerably lower than those for non-Indigenous school students, the disparity between the two groups is slowly lessening. In Year 11, the difference between Indigenous and non-Indigenous students decreased by 13 percentage points between 1998 and 2007. While the Year 12 differences decreased by 8 percentage points over this time period, Indigenous students were still much less likely than non-Indigenous students to progress to the final year of schooling in 2007.<sup>93</sup>

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90 Australian Bureau of Statistics, Population Characteristics, *Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 83 and 104.

91 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 16–17.

92 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 16–17.

93 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 16–17.

## 8.2 Year 12 completion rates

In the 2006 Census, among those who reported their highest year of schooling, the proportion of Indigenous peoples aged 15 years and over who had completed school to Year 12 increased from 20% in 2001 to 23% in 2006.

Rates of Year 12 completion improved in all states and territories, with the largest increases recorded in Tasmania (17% to 22%), the ACT (42% to 46%) and Queensland (26% to 30%).

Younger Indigenous peoples were more likely than older Indigenous peoples to have completed Year 12. The proportion of Indigenous peoples who had completed Year 12, as shown in the 2006 Census, ranged from 36% of people aged 18–24 years to 9% of people aged 55 years and over.

Overall, Indigenous males and females reported similar rates of Year 12 completion (22% compared with 24%).

Indigenous peoples living in rural or remote areas of Australia were less likely than those in urban areas to have completed Year 12. In 2006, 31% of Indigenous peoples living in major cities had completed school to this level, compared with 22% in regional areas and 14% in remote areas.

Despite these improvements however, Indigenous peoples aged 15 years and over were still half as likely as non-Indigenous Australians to have completed school to Year 12 in 2006 (23% compared with 49%). They were also twice as likely to have left school at Year 9 or below (34% compared with 16%). These relative differences have remained unchanged since 2001.<sup>94</sup>

## 8.3 Post secondary education

Although there have been continued improvements in the educational attainment of Indigenous Australians in recent years, levels of attainment remain below those of non-Indigenous Australians. Non-Indigenous people were twice as likely as Indigenous peoples to have a non-school qualification in 2006 (53% compared with 26%). Non-Indigenous people were more than four times as likely to have a Bachelor Degree or above (21% compared with 5%) and twice as likely to have an Advanced Diploma or Diploma (9% compared with 4%).<sup>95</sup>

## 8.4 Impact of educational attainment on employment, income and health

The positive effect that education has on an individual's economic outcomes, particularly employment and income, has been well established. Results from the 2006 Census show that Indigenous peoples aged 15 years and over with higher levels of schooling were more likely than those with lower levels of attainment to be in full-time employment.

This was particularly the case for young people aged 18–24 years, where the rate of full-time employment among those who had completed Year 12 was four times as high as among those who had left school at Year 9 or below (37% compared with 9%).<sup>96</sup>

94 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 16–17.

95 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 16–17.

96 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 20.

Correspondingly, Indigenous peoples who had completed secondary school had higher incomes than those who had left school at lower grades. Among those who were employed, Indigenous peoples aged 15 years and over who had completed Year 12 had a median gross individual income of \$620 per week compared with \$405 per week for those who left school at Year 9 or below.<sup>97</sup>

The NATSIHS 2004–5 allows for the interactions between educational attainment and health outcomes to be explored. Results show that educational attainment was positively associated with health status.

Indigenous adults aged 18–34 years who had completed Year 12 were more likely than those who had left school at Year 9 or below to rate their health as excellent or very good (57% compared with 45%), and were less likely to rate their health as fair or poor (10% compared with 16%). They were also around half as likely to report high/very high levels of psychological distress in the last four weeks (19% compared with 35%). A similar pattern of association between educational attainment and health outcomes was also observed for Indigenous peoples aged 35 years and over.<sup>98</sup>

The likelihood of engaging in health risk behaviours also decreased with higher levels of schooling. In 2004–05, young adults who had completed Year 12 were half as likely as those who had completed Year 9 or below to regularly smoke and to consume alcohol at long-term risky/ high risk levels. In non-remote areas, Indigenous young people with higher educational attainment were also less likely to be sedentary or engage in low levels of exercise, and to have no usual daily intake of fruit or vegetables.<sup>99</sup>

Education level has also been shown to be positively associated with reductions in the rates of long-term health conditions, particularly heart disease and diet-related illnesses. In 2004–05, Indigenous peoples aged 35 years and over who had completed school to Year 12 were around half as likely to report having diabetes or cardiovascular disease as those who had left school at Year 9 or below. They were also less likely to report eye/ sight problems, osteoporosis and kidney disease.<sup>100</sup>

## 9. Housing and homelessness

### 9.1 Housing tenure

Indigenous households have been defined as households containing at least one Indigenous person of any age, excluding visitors. Of the 166,668 Indigenous households identified in the 2006 Census, 34% were home owners (with or without a mortgage), 59% were renting and 3% had other types of tenure.<sup>101</sup>

Between 2001 and 2006 the proportion of Indigenous home owner households increased from 31% to 34%. The proportions of Indigenous households renting from Indigenous or mainstream community housing organisations and those renting from private or other providers, fell by around two percentage points between 2001

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97 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 22.

98 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 24.

99 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 24.

100 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 25.

101 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 29–30.

and 2006, while the proportion of Indigenous households renting from state housing authorities remained relatively unchanged over this period.<sup>102</sup>

In comparison, 69% of the estimated 7 million other Australian households were home owners (with or without a mortgage) 26% were renting and 2% had other tenure types.<sup>103</sup>

Generally speaking, in remote areas, Indigenous peoples are less likely to own their home than in urban centres. This, in part, reflects the type of tenures available to people on traditional Indigenous lands.<sup>104</sup> However the issue of ownership in remote communities is more complex than simply relating to “types of tenure”. Issues such as availability of housing purchase stock, affordability and regular employment/ income streams are contributing factors.

Of among the 98,100 Indigenous households in rental accommodation, 27% were renting privately, 20% were renting from state or territory housing authorities, and 9% were renting from Indigenous or mainstream community housing organisations.

Of the 1.8 million Other Households that were renting, the majority were renting privately (1.4 million or 20% of other households), with just 4% renting from state or territory housing authorities and 1% from Indigenous or mainstream community organisations.<sup>105</sup>

## 9.2 Household size and overcrowding

Households with Indigenous person(s) tend to have more residents than other households. At the 2006 Census, there was an average of 3.4 persons in households with Indigenous person(s), compared with 2.6 persons in other households.

Both household size and the proportion of households requiring at least one additional bedroom rose with increased geographic remoteness. The size of the average household with Indigenous person(s) increased from 3.2 residents in major cities to 5.3 residents in very remote areas.<sup>106</sup>

Although there is no universally accepted definition of what constitutes overcrowding, data presented below uses the Canadian National Occupancy Standard as a measure. This standard specifies who should reasonably be expected to share bedrooms, dependent on age and sex.<sup>107</sup>

102 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 30.

103 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 30.

104 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 30.

105 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 30.

106 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 37.

107 The Canadian model is sensitive to both household size and composition and uses the following criteria to assess bedroom requirements:

- there should be no more than two people per bedroom;
- a household of one unattached individual may reasonably occupy a bed-sit;
- couples and parents should have a separate bedroom;
- children less than five years of age, of different sexes, may reasonably share a bedroom;
- children five years of age or over, of the opposite sex, should not share a bedroom;
- children less than 18 years of age and of the same sex may reasonably share a bedroom; and
- single household members aged 18 years or over should have a separate bedroom.

Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 40.

Based on this definition, 14% of households with Indigenous person(s) were considered to be living in dwellings requiring at least one additional bedroom, compared to 4% of other households. This was a decrease from 16% in 2001.<sup>108</sup>

Overcrowding rates varied according to tenure, with the highest rates of overcrowding found in Indigenous households renting Indigenous/ mainstream community housing (40% of Indigenous households and 64% of Indigenous peoples). In contrast, home owners (with or without a mortgage) had the lowest rates of overcrowding (7% of Indigenous households and 11% of Indigenous peoples).<sup>109</sup>

The highest rates of overcrowding among Indigenous households were in the Northern Territory (38%) followed by Western Australia (16%). Rates of overcrowding were especially high in the Indigenous/ mainstream community housing sector in the Northern Territory, where 61% of households were overcrowded.<sup>110</sup>

In terms of numbers of overcrowded Indigenous households, in 2006, Queensland had the largest number (6,200) followed by New South Wales (5,200).<sup>111</sup>

### 9.3 Housing quality

The most recent national survey to include measures of housing quality was the NATSISS 2002. It reported approximately one-third (35%) of Indigenous households were living in dwellings that had structural problems (e.g. rising damp, major cracks in floors or walls, major electrical/ plumbing problems and roof defects). Just over half (55%) of Indigenous households renting mainstream or community housing reported that their dwellings had structural problems.<sup>112</sup>

In 2006, the ABS Community Housing and Infrastructure Needs Survey (CHINS) also collected information about the state of repair of houses in discrete Indigenous communities, and their connection to essential services. This is also discussed in the next section.

The CHINS data on dwelling condition were collected for permanent dwellings and categorised according to the cost of repairs required to the dwelling. No data were collected on the 1,596 temporary or improvised dwellings in these communities which are likely to have been in the poorest condition. Some 4,039 Indigenous peoples (4% of the usual resident population) were living in temporary or improvised dwellings in 2006.<sup>113</sup>

In discrete Indigenous communities across Australia, there were around 6,674 dwellings (31%) that required major repair or replacement (table 4.13). Dwellings in remote and very remote areas tended to be in the poorest condition, with 9% requiring replacement compared with 4% of dwellings in non-remote areas.<sup>114</sup>

The Western Australian Aboriginal Child Health Survey developed a measure of housing quality based on the healthy living practices outlined in the National Framework for Indigenous Housing. The survey classified 16% of dwellings with Aboriginal children

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108 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 40–41.

109 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 41.

110 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 41.

111 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 41.

112 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 42.

113 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 43.

114 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 43.

as being of 'poor housing quality'. Dwellings with poor housing quality were more likely to be rented, and to be located in areas of extreme isolation and areas of relative socioeconomic disadvantage.

Households living in poor quality dwellings tended to have poorer economic wellbeing, lower levels of family functioning, experienced more life stresses and their members were more likely to overuse alcohol.<sup>115</sup>

### (a) Discrete Aboriginal or Torres Strait Islander communities

'Discrete' communities are those that comprise predominantly (i.e. over 50%) Indigenous peoples.<sup>116</sup> While they are found across Australia, the majority are situated in the Northern Territory and Western Australia.<sup>117</sup> They are primarily located in remote and very remote areas. Conditions in these communities were until very recently far poorer than conditions in non-Indigenous communities.

The Community Housing and Infrastructure Needs Surveys (CHINS) have been carried out every two years since 1997 by the ABS. They aim to provide a picture of life in discrete communities and allow government programs to improve conditions there to be monitored. In 2006, these communities had an estimated population of 92,960 people.<sup>118</sup>

The 2006 CHINS collected data on the main source of water, sewerage and electricity at the community level for all discrete Indigenous communities:

- The main source of drinking water for the majority of permanent dwellings (53%) was bore water; 30% were connected to a town supply and for 11% the source was a river or reservoir.
- In relation to sewerage, 33% of buildings were in communities with some type of septic system. The next most common type of sewerage system was a town system (30%) followed by community water-borne systems (30%) of dwellings).
- The main type of electricity supply for the majority of permanent dwellings (53%) was a community generator; 37% of dwellings were connected to the state grid and 3% relied on domestic generators.<sup>119</sup>

Between the 2001 and 2006 CHINS there was a decrease in the number and proportion of permanent dwellings not connected to an organised sewerage system or an organised water supply. However, there remains a small but significant number of dwellings without an organized sewerage system or water supply.<sup>120</sup>

Note that there are improvised dwellings in these communities for which data were not collected in the survey.<sup>121</sup>

115 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 42.

116 Australian Bureau of Statistics, *Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities 2006 (Reissue)*, ABS cat no 4710.0, (2007) p 87.

117 Australian Bureau of Statistics, *Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities 2006 (Reissue)*, ABS cat no 4710.0, (2007) p 56, Table 4.9.

118 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 43.

119 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 43.

120 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 43.

121 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 42.

## 10. Indigenous peoples and criminal justice systems

### 10.1 Indigenous adult prisoners

The *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) reported in 1991. At that time, Aboriginal people made up 14% of the total prison population and were up to 15 times more likely to be in prison than non-Aboriginal people. The Report made a large number of recommendations to address this issue.<sup>122</sup>

Despite this, the number of Indigenous prisoners has increased significantly over the 17-years since the RCIADIC. Indigenous prisoners represented 24% of the total prisoner population (6139 males and 567 females)<sup>123</sup> as of the 30<sup>th</sup> June 2008, a proportion unchanged from the previous year.<sup>124</sup> The ABS notes that caution must be taken in interpreting the increases in the percentage of Indigenous peoples in the prison population, the increase may be due to alterations in the method of data collection and/ or the willingness of Indigenous prisoners to participate and identify themselves as Indigenous.<sup>125</sup>

Age standardisation is a statistical method that adjusts crude rates to account for age differences between study populations. Age standardisation enables better comparisons between different populations. In the context of such a comparison, the key variable interests are the ratio of rates, rather than the age standardised rates alone. Using this, the ABS calculates that at June 2008 Indigenous peoples were 13 times more likely than non-Indigenous people to be in prison, unchanged from 2007.<sup>126</sup> Between jurisdictions, rates vary. For example, as of June 2008, Indigenous peoples in Western Australia were 20 times more likely to be imprisoned than non-Indigenous people. This was the highest age standardised ratio in Australia.<sup>127</sup>

A 2003 study demonstrates the extent of contact Indigenous peoples have with criminal justice processes in New South Wales. Between 1997 and 2001, a total of 25,000 Indigenous peoples appeared in a NSW Court charged with a criminal offence. This constitutes 28.6% of the total NSW Indigenous population. In the year 2001 alone, nearly one in five Indigenous males in NSW appeared in Court charged with a criminal offence. For Indigenous males aged 20–24 years, this rate increased to over 40%.<sup>128</sup>

The median age of all prisoners as of June 30 2007 was 33 years, while the median age of Indigenous male prisoners was 31 years, and the median age of Indigenous female prisoners was 30 years.<sup>129</sup>

### 10.2 Indigenous women

Although there are less Indigenous women in custody they are currently the fastest growing prison population and are severely overrepresented.

Incarceration rates for women generally have increased more rapidly than for men and the increase in imprisonment of Indigenous women has been much greater over the

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122 *Royal Commission into Aboriginal Deaths in Custody, National Report* (1991) volume 1, para. 9.3.1. At [www.austlii.edu.au/au/other/IndgLR/res/rciadic](http://www.austlii.edu.au/au/other/IndgLR/res/rciadic) (viewed 19 January 2009).

123 Australian Bureau of Statistics, *Prisoners in Australia 2008*, ABS cat no 4517.0 (2008) p 22, table 8.

124 Australian Bureau of Statistics, *Prisoners in Australia 2008*, ABS cat no 4517.0 (2008) p 6.

125 Australian Bureau of Statistics, *Prisoners in Australia 2008*, ABS cat no 4517.0 (2008) p 6.

126 Australian Bureau of Statistics, *Prisoners in Australia 2008*, ABS cat no 4517.0 (2008) p 6.

127 Australian Bureau of Statistics, *Prisoners in Australia 2008*, ABS cat no 4517.0 (2008) p 6.

128 D Weatherburn, B Lind, B Hua and J Hua, 'Contact with the New South Wales court and prison system: the influence of age, Indigenous status and gender' (2003) *Crime and Justice Bulletin* 78(1) p 4–5. At [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CJB78.pdf/\\$file/CJB78.pdf#target='\\_blank'](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB78.pdf/$file/CJB78.pdf#target='_blank') (viewed 19 January 2009).

129 Australian Bureau of Statistics, *Prisoners in Australia 2008*, ABS cat no 4517.0 (2008) p 8.

period compared with non-Indigenous women.<sup>130</sup> The Indigenous female imprisonment rate has increased by 34 % between 2002 and 2006 while the imprisonment rate for Indigenous men has increased by 22%.<sup>131</sup>

Indigenous women are also 23 times more likely to be imprisoned than non-Indigenous women while Indigenous men are 16 times more likely to be imprisoned than non-Indigenous men.<sup>132</sup>

### 10.3 Indigenous juveniles

In 2005–06, Indigenous young people are significantly overrepresented in the juvenile justice system: 44 per 1,000 Indigenous youths were under juvenile justice supervision, while only 3 per 1,000 non-Indigenous youths were under such supervision.<sup>133</sup>

A study in Queensland has tracked the trajectory through the criminal justice system of young offenders who first appeared in the juvenile justice system from 1994–95 (through custodial and non-custodial orders) up to September 2002<sup>134</sup>. The study reported that by September 2002, 89% of Indigenous male juveniles on supervised orders had progressed to the adult system, with 71% having served at least one term of imprisonment. It also reported there was an increased likelihood that those juveniles who were subject to a supervised justice order and had been the subject of a care and protection order would proceed to the adult criminal justice system, with 91% of all such juveniles having some contact with the adult system, and 67% having served at least one term of imprisonment. The study concluded that ‘over time, the probability of those juveniles on supervised orders in 1994–95 who are subject to multiple risk factors (e.g. male, Indigenous, care and protection order) progressing to the adult corrections system will approach 100 per cent.’<sup>135</sup>

### 10.4 Indigenous prisoner health status

Data collection on Indigenous prisoner health status is very poor, however, given the extensive evidence of Indigenous health inequality, it is reasonable to assume that Indigenous prisoners would experience ‘a health status the same or probably worse than that of the general prisoner population’.<sup>136</sup>

The National Prison Entrants Bloodborne Virus Survey found that levels of Hepatitis B exposure is considerably higher for Indigenous prisoners, with 29% of Indigenous prisoners reporting exposure compared to 18% of the non-Indigenous prisoner population.<sup>137</sup> Similar levels of Hepatitis C were found for Indigenous and non-

130 M Cameron, ‘Women Prisoners and Correctional Programs’, *AIC Trends and Issues in Crime and Criminal Justice*, no 194, Australian Institute of Criminology (2001) p 1.

131 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission (2007) p 128.

132 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission (2007) p 129.

133 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 228.

134 M Lynch, J Buckman, and L Krenske, *AIC Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology and Queensland Crime and Misconduct Commission, Issues paper 265 (2003).

135 M Lynch, J Buckman, and L Krenske, *AIC Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology and Queensland Crime and Misconduct Commission, Issues paper 265 (2003) p 2.

136 Australian Medical Association, *Undue Punishment? Aboriginal People and Criminal Justice in Prison: An Unacceptable Reality*, Australian Medical Association Report Card Series (2006). At [https://fed.ama.com.au/cms/web.nsf/doc/WEEN-6PU9BH/\\$file/Indigenous\\_Report\\_Card\\_2006.pdf](https://fed.ama.com.au/cms/web.nsf/doc/WEEN-6PU9BH/$file/Indigenous_Report_Card_2006.pdf) (viewed 19 January 2009).

137 T Butler, L Boonwaat and S Hailstone, *National Prison Entrants Bloodborne Virus Survey Report 2004*, Centre for Health Research in Criminal Justice and National Centre for HIV Epidemiology and Clinical Research (2005), p 5. At [http://www.justicehealth.nsw.gov.au/publications/bbv\\_survey.pdf](http://www.justicehealth.nsw.gov.au/publications/bbv_survey.pdf) (viewed 19 January 2009).

Indigenous prisoners, with 37% of Indigenous prisoners compared with 34% of non-Indigenous prisoners, having Hepatitis C antibodies.<sup>138</sup>

Another way of looking at the health inequality of Indigenous prisoners is tracking the mortality rate of prisoners upon their release from custody. A retrospective cohort study of adults imprisoned in NSW between 1988 and 2002 found that Indigenous men were 4.8 times more likely; and Indigenous women were 12.6 times more likely, to die after release from custody than the general NSW population.<sup>139</sup> Many of these deaths were attributed to mental and behavioural disorders and drug-related deaths.<sup>140</sup>

### 10.5 Indigenous deaths in custody

Over 1990–1999, the decade since the RCIADIC reported, the Australian Institute of Criminology reports that despite some fluctuations in rates of both Indigenous and non-Indigenous deaths in custody since 1982, the rates of death per 1,000 prisoners have become more similar since 1999 and both have begun to trend downward since 1999. This indicates that the disproportionate number of Indigenous deaths in custody relative to the total Indigenous population is a reflection of the over-representation of Indigenous peoples in criminal justice processes.<sup>141</sup>

In 2006, there were 54 recorded deaths in custody and custody-related operations. There were 11 recorded incidents of Indigenous deaths in custody: four in prison custody, six in police custody and custody-related operations, and one in juvenile detention.<sup>142</sup>

## 11. Child protection

### 11.1 History of Indigenous child removals

To measure the number of Indigenous peoples potentially impacted by the removal of children from their families under past practices of forcibly and administratively removing Indigenous children from their families, the ABS social surveys have included questions asking respondents whether they or any of their relatives had been removed from their natural families.

Both the 1994 and 2002 surveys report that 8% of Indigenous respondents aged 15 years or over at the time of the surveys, had been taken away from their natural family.<sup>143</sup> The incidence of removal increased slightly with age, (perhaps reflecting greater numbers of removals in the past):

- 10% of Indigenous respondents aged 25 years or over reported that they had been taken away from their natural family.

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138 T Butler, L Boonwaat and S Hailstone, *National Prison Entrants Bloodborne Virus Survey Report 2004*, Centre for Health Research in Criminal Justice and National Centre for HIV Epidemiology and Clinical Research (2005), p 5. At [http://www.justicehealth.nsw.gov.au/publications/bbv\\_survey.pdf](http://www.justicehealth.nsw.gov.au/publications/bbv_survey.pdf) (viewed 19 January 2009).

139 A Kariminia, T Butler, S Corben, M Levy, L Grant, J Kaldor and M Law, 'Extreme cause-specific mortality in a cohort of adult prisoners – 1988–2002: a data linkage study' (2007) 36(2) *International Journal of Epidemiology* 310, p 314.

140 A Kariminia, T Butler, S Corben, M Levy, L Grant, J Kaldor and M Law, 'Extreme cause-specific mortality in a cohort of adult prisoners – 1988–2002: a data linkage study' (2007) 36(2) *International Journal of Epidemiology* 310, p 310.

141 M Lynch, J Buckman, and L Krenske, *AIC Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology and Queensland Crime and Misconduct Commission, Issues paper 265 (2003) p ix.

142 J Joudo and J Curnow, *Deaths in Custody in Australia: National deaths in Custody program annual report 2006*, Australian Institute of Criminology, Technical and Background paper no. 85 (2006) p xiii.

143 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005) p 2.

- 10% was recorded for the closest equivalent age cohort group (35 years or over) in the NATSISS 2002.

In the NATSISS 2002, 38% of respondents reported that they had either been removed themselves and/ or had relatives who, as a child, had been removed from their natural family. The most frequently reported relatives removed were grandparents (15%), aunts or uncles (11%), and parents (9%).<sup>144</sup>

The intergenerational impacts of past child removal practices (see Text Box 2 below) are reflected in the higher numbers of substantiation orders, child protection orders and child removal orders being made in the present day in relation to Indigenous children.

### **Text Box 2: The intergenerational impacts of past child removal practices<sup>145</sup>**

The Western Australian Aboriginal Child Health Survey (WAACHS) 2002 provides a robust scientific evidence-base of the intergenerational effects on today's Indigenous children and their carers of past child removal practices. The WAACHS surveyed the health and wellbeing of 5,289 Western Australian Indigenous children aged 0–17 years and their carers.

In the survey, around 12.3 per cent of primary carers and 12.3 per cent of secondary carers reported they had been subject to such separation. Carers were also asked whether either of their parents had been forcibly separated from their natural family. Some 20.3 per cent of the mothers of primary carers (e.g. grandmothers of the survey children) and 12.6 per cent of the fathers of primary carers (e.g. grandfathers of the survey children) had been forcibly separated.

Among all of the Aboriginal children and young people living in Western Australia, 35.3 per cent were found to be living in households where a carer or a carer's parent (e.g. grandparent) was reported to have been forcibly separated from their natural family.

It was found that carers who had been forcibly separated from their natural families (compared with carers of Aboriginal children who had not been forcibly separated) were:

- 1.95 times more likely to have been arrested or charged with an offence
- 1.61 times more likely to report the overuse of alcohol caused problems in the household
- 2.10 times more likely to report that betting or gambling caused problems in the household
- Less than half as likely to have social support in the form of someone they can 'yarn' to about problems
- 1.50 times more likely to have had contact with Mental Health Services in Western Australia.

Further, Aboriginal children whose primary carer had been forcibly separated from their natural family were found to be 2.34 times more likely to be at high risk of clinically significant emotional or behavioral difficulties than children whose carers were not forcibly separated

144 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004–05*, ABS cat no 4715.0 (2005) p 5–6.

145 Kulunga Research Network and the Telethon Institute for Child Health Research, *Submission to the Senate Committee Inquiry into the Stolen Generation Compensation Bill 2008*, April 9, 2008. At [www.aph.gov.au/SENATE/committee/legcon\\_ctte/stolen\\_generation\\_compensation/submissions/sub42.pdf](http://www.aph.gov.au/SENATE/committee/legcon_ctte/stolen_generation_compensation/submissions/sub42.pdf) (viewed 19 January 2009).

## 11.2 Present day

There are three areas of child protection services for which national data is compiled:

- Child protection notifications, investigations and substantiations;
- Children on care and protection orders; and
- Children in out-of-home care.

Children who are perceived to be in need of protection can come into contact with community services departments or child protection agencies (in the states and territories) by someone expressing concern about the welfare of a child or making a report to the department.

From the reporting stage, if it is decided that the child is prima facie under risk of harm (neglect or abuse) the report is classified as a notification. Most notifications are investigated and classified as substantiated or not substantiated according to the degree of risk to the child. A range of services are then provided to that child and the child's family.

In extreme cases, state departments can apply to a court for a care and protection order. Children can also be placed in out-of-home care, either temporarily or more long term, by order of the court.<sup>146</sup>

### (a) Child protection notifications, investigations and substantiations

The rates of Indigenous children entering the child protection system are higher than the rates for other children. In 2005–06, the rates of Aboriginal and Torres Strait Islander children who were the subject of a child protection substantiation were substantially higher than the rates for other children in all jurisdictions except Tasmania.<sup>147</sup>

Table 4 below sets out the rate of substantiated child protection notifications per thousand children for Indigenous and other children, and a standardised ratio (SR) showing the Indigenous rate as a multiple of the non-Indigenous rate.

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146 For a detailed explanation of care and protection classifications and statistics see: Australian Institute of Health and Welfare, *Child Protection 2001–02* (2003) ch 1.

147 The ABS cautions that data for Tasmania, however, should be interpreted with caution due to the low incidence of child protection workers recording Indigenous status at the time of the substantiation: Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians 2001*, ABS cat no 4705.0 (2002) p 222.

**Table 4: Children who were the subject of child protection substantiation: By State and Territory, Indigenous status 2005–06<sup>148</sup>**

State/Territory	Indigenous (per 1,000 children)	Other children (per 1,000 children)	Likelihood that Indigenous children will be subject of a child protection substantiation as a multiple of the rate for other children
NSW	44.2	6.9	6.4
Vic	67.7	6.0	11
Qld	23.0	10.9	2.3
WA	10.9	1.4	7.8
SA <sup>149</sup>	32.2	3.5	9.2
NT	15.2	3.2	4.8
Tas	4.4	6.2	0.7
A.C.T	56.8	10.9	12.0

Substantiations are classified into one of the following four categories depending on the main type of abuse or neglect that has occurred: physical abuse, sexual abuse, emotional abuse, or neglect. The precise definition of type of abuse or neglect, as well as the types of incidences that may be substantiated, vary according among jurisdictions.

Compared to non-Indigenous children, Indigenous children were more likely to be the subject of a substantiation of neglect than other children. For example, in Western Australia 40% of Indigenous children in substantiations were the subjects of a substantiation of neglect, compared with 30% of other children.

Contrary to popular perceptions, the data suggests that non-Indigenous children were more likely than Indigenous children to have substantiations where the main type of abuse was sexual. For example, in New South Wales, 17% of other Australian children had substantiations where the main type of abuse was sexual abuse, compared with 9% of Indigenous children .

Likewise in the Northern Territory, in 2005–06 (the year prior to the Northern Territory Emergency Response (NTER)) 4.2% of Indigenous child substantiations were for sexual abuse compared to 9.3% of other Territorian children,<sup>150</sup> a figure that does not appear to support the allegations of endemic child abuse in NT remote communities that was the rationale for the NTER. However, the possibility of significant under-reporting must be considered as an explanatory factor, particularly in the light of the

148 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians 2001*, ABS cat no 4705.0 (2002) p 223, Table 11.2.

149 The ABS cautions that SA data should be interpreted with caution due to the high proportion of investigations not finalised by 31 August 2006 (the cut-off date for the processing of investigations for inclusion in the data for that year).

150 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians 2001*, ABS cat no 4705.0 (2002) p 223, Table 11.3.

findings of the Little Children are Scared Report.<sup>151</sup> There was, in the authors' opinion, 'sufficient anecdotal and forensic and clinical information available to establish that there is a significant problem in the Northern Territory in relation to the sexual abuse of children'.<sup>152</sup>

**(b) Care and protection orders**

The rate of Indigenous children being placed on care and protection orders was around seven times the rate for other Australian children. Table 5 shows the rate ratios varied considerably by jurisdiction and were highest in Victoria. Otherwise, the rate per 1,000 Indigenous children is significantly higher than the rate for other children across all jurisdictions.

**Table 5: Rate of children on care and protection orders: By Indigenous status and state/ territory, 30 June 2006<sup>153</sup>**

State/Territory	Indigenous children (rate per 1,000)	Other children (rate per 1,000)	Ratio of Indigenous children to other children on care and protection orders
NSW	37.2	4.5	8.3
Vic	56.4	4.6	12.3
Qld	26.7	5.2	5.1
WA	31.8	3.9	8.2
SA	25.8	2.7	9.6
Tas	15.2	6.5	2.3
A.C.T	12.2	3.8	3.2
NT	53.3	6.2	8.6

**(c) Children in out-of-home care**

Table 6 compares the rate per 1,000 Indigenous children and rate per 1,000 other children in out-of-home care. It shows that the national rate per 1,000 Indigenous children is 7.3 times the rate for other children across all jurisdictions.

151 P Anderson and R Wild, Ampe Akelyernemane Meke Mekarle – *Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007).

152 P Anderson and R Wild, Ampe Akelyernemane Meke Mekarle – *Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007).

153 Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 225, Table 11.4.

**Table 6: Rate of children in out-of-home care: By Indigenous status and state/territory, 30 June 2006<sup>154</sup>**

State/Territory	Indigenous children (rate per 1,000)	Other children (rate per 1,000)	Rate/ratio
NSW	44.7	4.6	9.7
Vic	42.1	3.7	11.4
Qld	24.0	4.7	5.1
WA	30.2	3.4	8.9
SA	24.8	2.6	9.5
Tas	11.9	5.4	2.2
A.C.T	10	3.0	3.3
NT	43.7	4.1	10.7
<b>Total</b>	<b>29.8</b>	<b>4.1</b>	<b>7.3</b>

At 30 June 2006, 62% of Indigenous children in out-of-home care across Australia were placed in accordance with the Aboriginal Child Placement Principle. This Principle outlines a preference for placing Indigenous children with an Indigenous family. It places a preference for placements first with their extended families, second with their Aboriginal or Torres Strait Islander community and third with Indigenous peoples before placing the child with a non-Indigenous family.<sup>155</sup>

## 12. The economic cost of inequality

In 2008, Reconciliation Australia published *An overview of the economic impact of Indigenous disadvantage*, a report commissioned from Access Economics, that attempted, for the first time, to quantify the economic impact of Indigenous socio-economic disadvantage.

Extracts from the Summary are included in Text Box 3.

<sup>154</sup> Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 225, Table 11.4.

<sup>155</sup> Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p 225.

### Text Box 3: Economic cost of inequality

The analysis in this report shows there are sizeable economy wide benefits to be achieved from improving the quality of life of Indigenous Australians. In a 'what if' scenario based on raising the life expectancy of Indigenous Australians and increasing the proportion of the Indigenous population in the workforce who are also able to take on higher skilled and better paid jobs to levels commensurate with those of all Australians, real GDP could be 1% higher than otherwise in 2029 – equivalent to around \$10 billion today. Further, since the increase in GDP is larger than the forecast increase in the total population, national living standards for all Australians would increase. Therefore, there are clear economic benefits from government action to reduce Indigenous disadvantage.

The economic benefits will only be realised if the health and educational attainment of Indigenous Australians improves. In fact the modelling outcomes are predicated on the many facets of Indigenous disadvantage that contribute to their poorer health and labour market outcomes being addressed. In another light, achieving the economic benefits implies an improved quality of life for Indigenous peoples – a reduction in the burden of disease and an improvement in the ability of Indigenous Australians to share in economic prosperity....

If the circumstances of Indigenous Australians improve to match those of the Australian average:

- government revenue in 2029 would be \$4.6 billion higher than otherwise; and
- government expenditure in 2029 in key portfolios relevant to Indigenous Australians would be \$3.7 billion lower than otherwise....

Foreshadowing possible policies and programs required to achieve the economic benefits was out of the scope for this project. However, the analysis of government budgets suggests that from 2029, there will be an additional \$8.3 billion available to governments each year if Indigenous disadvantage were alleviated. In principle, these additional public funds could be allocated to policies and programs aimed at improving the quality of life of Indigenous Australians.<sup>156</sup>

<sup>156</sup> Access Economics for Reconciliation Australia, *An overview of the economic impact of Indigenous disadvantage*, (2008) p 5–6 (extracts). At <http://www.reconciliationaustralia.org/downloads/772/TheeconomicimpactofIndigenousdisadvantageSep08.pdf> (viewed 19 January 2008).

## Appendix 3

# National Aboriginal and Torres Strait Islander Education Policy (AEP)<sup>1</sup>

.....

### **Major goal 1 – Involvement of Aboriginal and Torres Strait Islander People in educational decision-making**

#### *Long term goals*

1. To establish effective arrangements for the participation of Aboriginal and Torres Strait Islander parents and community members in decisions regarding the planning, delivery and evaluation of preschool, primary and secondary education services for their children.
2. To increase the number of Aboriginal and Torres Strait Islander people employed as educational administrators, teachers, curriculum advisers, teachers assistants, home-school liaison officers and other education workers, including community people engaged in teaching Aboriginal and Torres Strait Islander culture, history and con-temporary society, and Aboriginal and Torres Strait Islander languages.
3. To establish effective arrangements for the participation of Aboriginal and Torres Strait Islander students and community members in decisions regarding the planning, delivery and evaluation of post-school education services, including technical and further education colleges and higher education institutions.
4. To increase the number of Aboriginal and Torres Strait Islander people employed as administrators, teachers, researchers and student services officers in technical and further education colleges and higher education institutions.
5. To provide education and training services to develop the skills of Aboriginal and Torres Strait Islander people to participate in educational decision-making.
6. To develop arrangements for the provisions of independent advice from Aboriginal and Torres Strait Islander communities regarding educational decisions at regional, state, territory and national levels.

### **Major goal 2 – Equality of access to education services**

#### *Long term goals*

7. To ensure that Aboriginal and Torres Strait Islander children of pre-primary school have access to preschool services on a basis comparable to that available to other Australian children of the same age.

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<sup>1</sup> Australian Government Department of Education, Science and Training, National Aboriginal and Torres Strait Islander Education Policy. At <http://www.dest.gov.au/archive/schools/indigenous/aep.htm> (viewed 17 January 2009).

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8. To ensure that all Aboriginal and Torres Strait Islander children have local access to primary and secondary schooling.
9. To ensure equitable access of Aboriginal and Torres Strait Islander people to post-compulsory secondary schooling, to technical and further education, and to higher education.

### **Major goal 3 – Equity of educational participation**

#### *Long term goals*

10. To achieve the participation of Aboriginal and Torres Strait Islander children in preschool education for a period similar to that for other Australian children.
11. To achieve the participation of all Aboriginal and Torres Strait Islander children in compulsory schooling.
12. To achieve the participation of Aboriginal and Torres Strait Islander people in post-secondary education, in technical and further education, and in higher education, at rates commensurate with those of other Australians in those sectors.

### **Major goal 4 – Equitable and appropriate educational outcomes**

#### *Long term goals*

13. To provide adequate preparation of Aboriginal and Torres Strait Islander children through preschool education for the schooling years ahead.
14. To enable Aboriginal and Torres Strait Islander attainment of skills to the same standard as other Australian students throughout the compulsory schooling years.
15. To enable Aboriginal and Torres Strait Islander students to attain the successful completion of Year 12 or equivalent at the same rates as for other Australian students.
16. To enable Aboriginal and Torres Strait Islander students to attain the same graduation rates from award courses in technical and further education, and in higher education, as for other Australians.
17. To develop programs to support the maintenance and continued use of Aboriginal and Torres Strait Islander Languages.
18. To provide community education services which enable Aboriginal and Torres Strait Islander people to develop the skills to manage the development of their communities.
19. To enable the attainment of proficiency in English language and numeracy competencies by Aboriginal and Torres Strait Islander adults with limited or no educational experience.
20. To enable Aboriginal and Torres Strait Islander students at all levels of education to have an appreciation of their history, cultures and identity.
21. To provide all Australian students with an understanding of and respect for Aboriginal and Torres Strait Islander traditional and contemporary cultures.

## Appendix 4

### ‘Accessible’ and ‘available’

.....

The following definitions of ‘accessible’ and ‘available’ were sourced from the Australian Human Rights Commission’s *Rural and Remote Education Inquiry Briefing Paper*.<sup>1</sup>

A more detailed discussion of human rights provisions that are relevant to remote school education can be found in the report of the National Inquiry into Rural and Remote Education: *Emerging Themes*. *Emerging Themes* was prepared by the Australian Human Rights Commission in 2000 and is available online at: [http://www.humanrights.gov.au/pdf/human\\_rights/rural\\_remote/emerging\\_themes.pdf](http://www.humanrights.gov.au/pdf/human_rights/rural_remote/emerging_themes.pdf).

### Accessible

The UN Committee on Economic, Social and Cultural Rights has identified 3 inter-connected elements of ‘accessibility’ in the context of education.

- i. Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;
- ii. Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighborhood school) or via modern technology (e.g. access to a “distance learning” program);
- iii. Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) [of the International Covenant on Economic, Social and Cultural Rights] in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education (*General Comment No. 13, 1999, paragraph 6*).

Another element of ‘accessibility’ is what the Committee has termed ‘acceptability’: ‘the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4))’.<sup>2</sup>

1 Australian Human Rights Commission, *Rural and Remote Education Inquiry Briefing Paper*, (2001). At [http://www.humanrights.gov.au/Human\\_Rights/rural\\_education/briefing/right\\_ed2.html](http://www.humanrights.gov.au/Human_Rights/rural_education/briefing/right_ed2.html) (viewed 30 January 2009).

2 The Committee on Economic, Social and Cultural Rights, *General Comment No. 13*, (1999), para 6. At <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/ae1a0b126d068e868025683c003c8b3b?Opendocument> (viewed 14 January 2009).

Whether education is 'accessible' must be measured by objective criteria. Children should not be required to forego other entitlements, such as rest and leisure or cultural commitments, in order to access an education.

### Available

'Availability' has four dimensions:

- Geographic distribution
- Sufficient quantity
- Open and non-discriminatory right of entry
- Provision of proper facilities and staff.

'[F]unctioning educational institutions and programs have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programs are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.'<sup>3</sup>

Secondary schooling must be 'generally available' which means 'firstly, that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all'.<sup>4</sup>

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3 The Committee on Economic, Social and Cultural Rights, *General Comment No. 13*, (1999), para 6(a). At <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/ae1a0b126d068e868025683c003c8b3b?OpenDocument> (viewed 14 January 2009).

4 The Committee on Economic, Social and Cultural Rights, *General Comment No. 13*, (1999), para 13. At <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/ae1a0b126d068e868025683c003c8b3b?OpenDocument> (viewed 14 January 2009).





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## Social Justice Report 2008

*Aboriginal and Torres Strait Islander  
Social Justice Commissioner*



The *Social Justice Report 2008*, is produced by the Aboriginal and Torres Strait Islander Social Justice Commissioner, in accordance with the functions set out in section 46C(1) (a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

The focus of *Social Justice Report 2008* is on human rights protections for Indigenous peoples, remote Indigenous education, Indigenous healing and the progress on achieving Indigenous health equality by 2030.

The report makes 15 recommendations to government for addressing issues in these areas and one follow-up action for the Social Justice Commissioner on a National Indigenous Representative Body.



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