



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

# 2010

## Social Justice Report

.....

Aboriginal and Torres Strait Islander  
Social Justice Commissioner



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

© Australian Human Rights Commission 2011

This work is protected by copyright. Apart from any use permitted under the *Copyright Act 1968* (Cth), no part may be used or reproduced by any process without prior written permission from the Australian Human Rights Commission. Enquiries should be addressed to Public Affairs at [paffairs@humanrights.gov.au](mailto:paffairs@humanrights.gov.au).

## **Social Justice Report 2010**

ISSN 1837-6428 (Print) and ISSN 1837-6436 (Online)

### **Acknowledgments**

The Aboriginal and Torres Strait Islander Social Justice Commissioner thanks the following staff and interns of the Australian Human Rights Commission for their contribution to the *Social Justice Report 2010*: Alison Aggarwal, Fabienne Balsamo, Nick Burrage, Allyson Campbell, Jackie Hartley, Andy Gargett, Katie Kiss, Emilie Priday (staff); Gideon Kibret (Intern, University of Sydney); Jacintha Manton, Caroline Dimond (Interns, The Aurora Project). Contributions by Darren Dick, Priyanga Hettiarachi, Chris Holland and Margaret Raven of the Australian Human Rights Commission are also acknowledged.

The Social Justice Commissioner especially thanks all those who assisted with the preparation of this Report. A full list of acknowledgements is contained at Appendix 1.

### **Design and layout**

JAG Designs

### **Printing**

Paragon Printers Australasia

### **Cover photography**

Thinkstock photograph with design work by Riki Salam, Creative Director, Gilimbaa Pty Ltd.

The cover photograph reflects a key theme of the Report and the Social Justice Commissioner's priorities – building deeper and stronger relationships.

### **Electronic format**

This publication can be found in electronic format on the website of the Australian Human Rights Commission: [www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport10/](http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/).

### **Contact details**

For further information about the Australian Human Rights Commission, please visit [www.humanrights.gov.au](http://www.humanrights.gov.au) or email [paffairs@humanrights.gov.au](mailto:paffairs@humanrights.gov.au). You can also write to:

Social Justice Unit  
Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001

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



# Social Justice Report 2010



## **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) of the *Australian Human Rights Commission  
Act 1986* (Cth).



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*



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

## About the Aboriginal and Torres Strait Islander Social Justice Commissioner

The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established in 1993. The office of the Social Justice Commissioner is located within the Australian Human Rights Commission.

The Social Justice Commissioner:

- reports annually on the enjoyment and exercise of human rights by Aboriginal Torres Strait Islander peoples, and recommends action that should be taken to ensure these rights are observed
- reports annually on the operation of the *Native Title Act 1993* (Cth) and its effect on the exercise and enjoyment of the human rights of Aboriginal and Torres Strait Islander peoples
- promotes awareness and discussion of human rights in relation to Aboriginal and Torres Strait Islander peoples
- undertakes research and educational programs for the purpose of promoting respect for, and the enjoyment and exercise of, human rights by Aboriginal Torres Strait Islander peoples
- examines and reports on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal and Torres Strait Islander peoples.

### Office holders

- Mick Gooda: 2010–present
- Tom Calma: 2004–2010
- William Jonas AM: 1999–2004
- Zita Antonios: 1998–1999 (Acting)
- Mick Dodson: 1993–1998



### 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 Torres Strait Islander 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 Social Justice Commissioner and the support, strength and unity which the Commissioner 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:**

[http://www.humanrights.gov.au/social\\_justice/index.html](http://www.humanrights.gov.au/social_justice/index.html)



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

14 January 2011

The Hon Robert McClelland MP  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney

***Social Justice Report 2010***

I am pleased to present to you the *Social Justice Report 2010* (the Report), which I have prepared in accordance with section 46C(1)(a) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).

The AHRC Act 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 is focused on three main topics. First, I outline the priorities and issues that I will focus on during my term as Aboriginal and Torres Strait Islander Social Justice Commissioner (Chapter 1). In particular, I focus on how the *United Nations Declaration on the Rights of Indigenous Peoples* will provide a framework for pursuing these key priorities which are centred on building stronger and deeper relationships.

Second, I explore the significance of constitutional reforms in achieving a reconciled Australia (Chapter 2).

Third, the Report also includes a case study of the recent community-led developments in the Fitzroy Valley (Chapter 3). This Chapter argues that community-led development projects ensure the best outcomes for addressing concerns in Aboriginal and Torres Strait Islander communities.

Finally, Appendix 3 provides a chronology of events for 2009–2010.

The *Social Justice Report 2010* provides 15 recommendations for your consideration.

I look forward to discussing the Report with you.

Yours sincerely

Mick Gooda

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

---

**Australian Human Rights Commission**

Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW 2001  
GPO Box 5218, Sydney, NSW 1042  
Telephone: 02 9284 9600 Facsimile: 02 9284 9611  
Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

## Note on terminology

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.

The word **'peoples'** recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their lives. This is affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*.<sup>1</sup>

There is a growing debate about the appropriate terminology to be used when referring to Aboriginal and Torres Strait Islander peoples. The Social Justice Commissioner recognises that there is strong support for the use of the terminology 'Aboriginal and Torres Strait Islander peoples', 'First Nations' and 'First Peoples'.<sup>2</sup> Accordingly, the terminology 'Aboriginal and Torres Strait Islander peoples' is used throughout this Report.

Sources quoted in this Report use various terms including 'Indigenous Australians', 'Aboriginal and Torres Strait Islanders', 'Aboriginal and Torres Strait Islander people(s)' and 'Indigenous people(s)'. International documents frequently use the term 'indigenous peoples' when referring to the Indigenous peoples of the world. To ensure consistency, these usages are preserved in quotations, extracts and in the names of documents.

---

1 GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007). At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 5 November 2010).

2 See Steering Committee for the creation of a new National Representative Body, *Our future in our hands: Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples*, Australian Human Rights Commission (2009), pp 15, 43. At [http://www.humanrights.gov.au/social\\_justice/repbody/report2009/index.html](http://www.humanrights.gov.au/social_justice/repbody/report2009/index.html) (viewed 5 November 2010).

# Contents

---

<b>Introduction</b>	<b>ix</b>
Building on a legacy	ix
The foundations of the <i>Social Justice Report 2010</i>	xii
Overview of the <i>Social Justice Report 2010</i>	xiii
Review of other activities during the Reporting Period	xiv
Social Justice Unit projects	xv
Future directions	xvii

---

<b>Recommendations</b>	<b>xix</b>
------------------------	------------

---

<b>Chapter 1:</b>	<b>Towards a reconciled Australia: An agenda of hope</b>	<b>1</b>
1.1	Introduction	1
1.2	Human rights: The overarching framework	3
(a)	The value of human rights	3
(b)	Aboriginal and Torres Strait Islander peoples' engagement with the international human rights framework	5
(c)	The <i>United Nations Declaration on the Rights of Indigenous Peoples</i>	6
(d)	How will the Declaration inform my agenda?	12
1.3	Addressing Aboriginal and Torres Strait Islander disadvantage by rebuilding relationships	13
(a)	Promoting better relationships between Aboriginal and Torres Strait Islander peoples and the broader Australian community	14
(b)	Promoting better relationships between Aboriginal and Torres Strait Islander peoples and governments	19
(c)	Promoting better relationships within Aboriginal and Torres Strait Islander communities	24
1.4	Conclusion	27

---

<b>Chapter 2:</b>	<b>Constitutional reform: Creating a nation for all of us</b>	<b>29</b>
2.1	Introduction	29
2.2	Why does Australia as a nation need to recognise Aboriginal and Torres Strait Islander peoples in the Constitution?	33
(a)	Achieving true equality for Aboriginal and Torres Strait Islander peoples	33
(b)	Achieving a unified nation within Australia	38

2.3	What could reform look like?	42
	(a) Preambular reform	43
	(b) Reform to the body of the Constitution	44
2.4	What are the next steps to a successful referendum?	46
	(a) Bipartisan support	49
	(b) Popular ownership	52
	(c) Popular education	56
	(d) Ensuring a successful referendum strategy	59
2.5	Conclusion	63

---

**Chapter 3: From community crisis to community control in the Fitzroy Valley 67**

3.1	Community-led alcohol restrictions in the Fitzroy Valley	67
	(a) The Fitzroy Valley	68
	(b) Community crisis	69
	(c) Alcohol restrictions campaign	72
	(d) Issues of consent	75
	(e) The restrictions as a circuit breaker	77
	(f) A circuit breaker is not a silver bullet	80
3.2	Fitzroy Futures Forum: Local governance and local voices	81
	(a) Formation and background	82
	(b) The strengths of the Fitzroy Futures Forum	88
	(c) The Fitzroy Futures Forum and the future	90
3.3	A community response to Fetal Alcohol Spectrum Disorders	91
	(a) Designing the Fetal Alcohol Spectrum Disorders strategy	93
	(b) Working with trusted partners	98
	(c) Community consent for a prevalence study of Fetal Alcohol Spectrum Disorders	99
3.4	The challenges ahead in governance	105
	(a) National Partnership Agreement on Remote Service Delivery	106
	(b) Combating a business as usual approach	107
	(c) Key considerations to guide the delivery of government services	111
3.5	Concluding observations on the Fitzroy experience	117
3.6	Conclusion	120

---

**Appendices**

Appendix 1:	Acknowledgments	123
Appendix 2:	Recommendations from the <i>Social Justice Report 2009</i>	125
Appendix 3:	Chronology of events relating to the administration of Indigenous affairs, 1 July 2009 – 30 June 2010	129
Appendix 4:	Elements of a common understanding of free, prior and informed consent	151
Appendix 5:	Overview of the National Partnership Agreement on Remote Service Delivery	153



.....

## List of text boxes, figures and maps

<b>Chapter 1:</b>	<b>Towards a reconciled Australia: An agenda of hope</b>	
	Text Box 1.1: Coordinated opportunities for international engagement	6
	Text Box 1.2: Key themes in the Declaration	8
	Text Box 1.3: The right of self-determination	9
	Text Box 1.4: Sometimes our closest friend is the one who has travelled the greatest distance to be our friend	14
	Text Box 1.5: Racial Discrimination	16
	Text Box 1.6: Lateral violence	25
<b>Chapter 2:</b>	<b>Constitutional reform: Creating a nation for all of us</b>	
	Text Box 2.1: The National Apology	35
	Text Box 2.2: Why we need an Indigenous Declaration	37
	Text Box 2.3: The Refern Address: Prime Minister Paul Keating	39
	Text Box 2.4: The Refern Address: Prime Minister Paul Keating	40
	Text Box 2.5: Procedure for amending the Australian Constitution	47
	Text Box 2.6: The 1944, 1967 and 1999 referendums	48
	Figure 2.1: Pamphlet, 'Right Wrongs Write YES for Aborigines on May 27'	50
	Text Box 2.7: The 'Yes/No' booklet for the 1999 referendum	57
	Text Box 2.8: Expert Panel on Constitutional Recognition of Indigenous Australians: Terms of Reference	60
<b>Chapter 3:</b>	<b>From community crisis to community control in the Fitzroy Valley</b>	
	Map 3.1: The Fitzroy Valley	69
	Text Box 3.1: History, trauma and alcohol abuse	71
	Text Box 3.2: The impacts of the restrictions on the women's shelter	79
	Figure 3.1: The Fitzroy Futures Forum Engagement Structure	84
	Text Box 3.3: The Fitzroy Futures Fund in action: the <i>Fitzroy Population Project</i>	86
	Text Box 3.4: Community organisations dealing with community problems	89
	Figure 3.2: 'A Circle of Friends'	95
	Figure 3.3: Schematic of the <i>Marulu Project</i>	97
	Text Box 3.5: Support for action on FASD from the Women's Bush Camp	97
	Text Box 3.6: <i>Yajilarra</i> : using media as a lever for social change	98
	Text Box 3.7: The 'Gray Report': The Wadeye COAG Trial Evaluation – a failed experiment?	109
	Text Box 3.8: Royal Commission into Aboriginal Deaths in Custody	114



# Introduction

.....

It is with great pleasure that I present my first *Social Justice Report* (the Report) as the Aboriginal and Torres Strait Islander Social Justice Commissioner, having commenced my five-year term on 1 February 2010.

I write this Report as a Gangulu man from Central Queensland with over 25 years of experience working with our peoples in many different ways. I have worked at the community, regional, state, national and international levels, within organisations such as the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Cooperative Research Centre for Aboriginal Health (CRAH). All of these experiences have shaped my understanding of the human rights of Indigenous peoples.

One of my primary responsibilities as the Aboriginal and Torres Strait Islander Social Justice Commissioner is to report annually on the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples, and to make recommendations on the action that should be taken to ensure that these rights are observed.<sup>1</sup> This responsibility is fulfilled through the submission of an annual *Social Justice Report*.<sup>2</sup>

In this Report, I review developments in the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islanders peoples between 1 July 2009 – 30 June 2010 (the Reporting Period).

## Building on a legacy

I come into this position of Aboriginal and Torres Strait Islander Social Justice Commissioner after a period of great achievement and advocacy by my predecessors, Dr Tom Calma, Dr William Jonas and Professor Mick Dodson. I am honoured to have the opportunity to build on their strong legacy and advocate for our rights.<sup>3</sup>

Since the creation of the position of the Social Justice Commissioner in 1993, the annual *Social Justice Report* has played a significant role in monitoring the enjoyment and exercise of a vast array of Aboriginal and Torres Strait Islander peoples' rights including health,<sup>4</sup> education<sup>5</sup> and the right to self-determination,<sup>6</sup> to name a few. Previous *Social Justice Reports*

---

1 *Australian Human Rights Commissioner Act 1986* (Cth), s 46C(1)(a).  
2 For previous Social Justice Reports see, Australian Human Rights Commission, *Social Justice Reports*, [http://www.humanrights.gov.au/social\\_justice/sj\\_report/index.html](http://www.humanrights.gov.au/social_justice/sj_report/index.html) (viewed 5 November 2010).  
3 I also note that Zita Antonios acted as the Social Justice Commissioner between 1998-1999.  
4 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2005), pp 9-97. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport05/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport05/index.html) (viewed 10 December 2010).  
5 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), pp 95-145. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 10 December 2010).  
6 W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), pp 7-53. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport02/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport02/index.html) (viewed 10 December 2010).

## Social Justice Report 2010

have analysed the Northern Territory Intervention,<sup>7</sup> the post-ATSIC arrangements in Indigenous Affairs,<sup>8</sup> reconciliation,<sup>9</sup> family violence<sup>10</sup> and the operation of the criminal justice system.<sup>11</sup>

These reports have informed debate and provided practical guidance to governments across the breadth of issues in Aboriginal and Torres Strait Islander affairs. Importantly they have also led to real action, with a number of key recommendations being taken up by government.

For example, the *Social Justice Report 2005* framed the inequality of health and life expectation between our people and non-Indigenous Australians as a human rights issue. That Report called on all governments in Australia to commit to close this gap within a generation, based on our right to health and our right to enjoy the same opportunities to be as healthy as other people in Australia.

It was also the catalyst for the formation of a coalition of more than 40 Aboriginal and Torres Strait Islander and non-Indigenous peak health bodies and non-government organisations to progress what became known as the Close the Gap Campaign for Indigenous Health Equality. This was the first time these organisations had worked together to achieve Aboriginal and Torres Strait Islander health equality.

In 2008, the Australian Government, the federal opposition, the main Indigenous and non-Indigenous peak health bodies and the Social Justice Commissioner signed the 'Close the Gap Statement of Intent' which committed all parties to a national plan

---

7 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2008), pp 197-305. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 10 December 2010)

8 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2005), pp 99-221. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport05/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport05/index.html) (viewed 10 December 2010); T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), pp 21-107. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 10 December 2010).

9 W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, Human Rights and Equal Opportunity Commission (2000), pp 5-32, 87-132. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport00/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport00/index.html) (viewed 10 December 2010); W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), pp 57-87. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport02/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport02/index.html) (viewed 10 December 2010); W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, Human Rights and Equal Opportunity Commission (2004), pp 57-106. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport03/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport03/index.html) (viewed 10 December 2010).

10 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2008), pp 7-187. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 10 December 2010); W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, Human Rights and Equal Opportunity Commission (2004), pp 155-194. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport03/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport03/index.html) (viewed 10 December 2010).

11 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2009), pp 9-55. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html) (viewed 10 December 2010); T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission (2005), pp 11-65. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport04/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport04/index.html) (viewed 10 December 2010); W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2002), pp 135-177. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport02/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport02/index.html) (viewed 10 December 2010); W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Human Rights and Equal Opportunity Commission (2001) pp 7-33, 101-133. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport01/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport01/index.html) (viewed 10 December 2010).

for achieving health equality by 2030. This Statement of Intent was matched by the biggest investment in our health since federation, some \$1.58 billion.<sup>12</sup>

This was the first time the Australian Government had made a commitment to achieve health equality for Aboriginal and Torres Strait Islander peoples in a specified time frame. It also committed the parties to ensuring our peoples could fully participate in all aspects of their health needs. The Prime Minister also committed to reporting to Parliament on the Australian Government's progress against these commitments each year.

Despite these advances, work still needs to be done. The challenge remains to build on this commitment and develop a national plan for our health in partnership with Aboriginal and Torres Strait Islander peoples. The role of the Social Justice Commissioner has been central to the establishment of the National Congress of Australia's First People. National representation for Aboriginal and Torres Strait Islander peoples since the abolition of ATSIC has also been a key area of successful advocacy by Tom Calma. The *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration) reinforces our right to participate in decision-making that affects us,<sup>13</sup> as well as the right to develop our own institutions.<sup>14</sup>

The *Social Justice Report 2008* charted a framework for human rights protection for Aboriginal and Torres Strait Islander peoples in the 21<sup>st</sup> century, which included the need for constitutional reform.<sup>15</sup> I intend to build on this platform in this Report.

Last year, the *Social Justice Report 2009* had a strong focus on culture and identity. In particular it examined the issues of Aboriginal and Torres Strait Islander languages and homeland communities.<sup>16</sup> In this year's Report, I continue to highlight the underlying importance of culture, identity and choice through an analysis of successful community-building in the Fitzroy Valley.

The impact of the role of Aboriginal and Torres Strait Islander Social Justice Commissioner has also been noticed at the international level. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur)<sup>17</sup> visited Australia last year to report on the situation of human rights of Aboriginal and Torres Strait Islander peoples. In his report he recognised the position of the Social Justice Commissioner as 'an exceptional model for advancing the recognition and protection of rights of indigenous peoples'.<sup>18</sup> He also

12 Council of Australian Governments, *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes* (2008) para 28. At [http://www.coag.gov.au/intergov\\_agreements/federal\\_financial\\_relations/docs/national\\_partnership/NP\\_closing\\_the\\_Gap\\_indigenous\\_health\\_outcomes.rtf](http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/NP_closing_the_Gap_indigenous_health_outcomes.rtf) (viewed 10 December 2010).

13 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 18. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

14 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 33. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

15 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), pp 62-76. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 10 December 2010).

16 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2009), pp 57-139. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html) (viewed 10 December 2010).

17 On 30 September 2010, the Human Rights Council adopted a resolution to extend the mandate of Special Rapporteur for three years and to change the title of the office to 'Special Rapporteur on the rights of indigenous peoples': *Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples*, HRC Resolution 15/14, UN Doc A/HRC/RES/15/14 (2010). Throughout this Report, I will refer to the Special Rapporteur's title as it existed during the Reporting Period.

18 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, *Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 78. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

recommended that the *Social Justice Report* and *Native Title Report* be 'given greater attention in government administration to promote a higher level of accountability and sensitivity to human rights commitments.'<sup>19</sup>

I also urge governments at all levels in Australia, when analysing and responding to this year's and future reports, to heed the recommendation of the Special Rapporteur.

### The foundations of the *Social Justice Report 2010*

Since beginning in this job I have met with as many Aboriginal and Torres Strait Islander organisations, communities and community leaders as possible. I have visited many communities and have heard first-hand information about the human rights issues that Aboriginal and Torres Strait Islander peoples believe require urgent action.

I have asked them to share with me their challenges, their strengths and their hopes. I have heard about their frustrations. I have asked them to identify the barriers to social justice that they face in their region, their experiences with government processes, and what it would take for them to more readily enjoy and exercise their human rights.

And I have listened to the solutions that they propose.

I also had the privilege of attending the ninth session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the third session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

These international mechanisms provide an opportunity for governments, independent experts and Indigenous peoples from around the world to discuss matters that affect Indigenous peoples. At these sessions, I was reminded that many of the issues that Aboriginal and Torres Strait Islander peoples face here in Australia are markedly similar to those faced by Indigenous peoples across the world.

For example, at the UNPFII session, Indigenous peoples articulated the need for a new approach to development that embraces their cultures and identities. In the lead-up to the UNPFII session, a group of independent experts explained:

Indigenous peoples want development with culture and identity where their rights are no longer violated, where they are not discriminated against, excluded or marginalized and where their free, prior and informed consent is obtained before projects and policies affecting them are made and equitable benefit-sharing is recognized and operationalized.<sup>20</sup>

Similarly, discussions at the EMRIP session focused on the right of Indigenous peoples to participate in decision-making. The EMRIP considered that:

[I]ndigenous participation in decision-making on the full spectrum of matters that affect their lives forms the fundamental basis for the enjoyment of the full range of human rights.<sup>21</sup>

---

19 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 78. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

20 United Nations Permanent Forum on Indigenous Issues, *Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples: Report of the international expert group meeting*, UN Doc E/C.19/2010/14 (2010), para 17. At <http://www.un.org/esa/socdev/unpfi/documents/E.C.19.2010.14%20EN.pdf> (viewed 19 October 2010).

21 Expert Mechanism on the Rights of Indigenous Peoples, *Progress report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), para 2. At [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf) (viewed 19 October 2010).

This is consistent with what I have heard during my community visits. Time and time again, I have heard that Aboriginal and Torres Strait Islander peoples want governments to change the way they do business, for governments to embrace our rights, particularly our right to self-determination, in all laws, policies and programs.

Most importantly, we want to forge new relationships with governments, the corporate sector and the wider community. We want these relationships to be based on equality, non-discrimination and full respect for our rights. Unless we are able to build these new relationships, we will not achieve reconciliation in this country. Nor will we effectively address Aboriginal and Torres Strait Islander disadvantage.

## Overview of the *Social Justice Report 2010*

In preparing this Report and its companion, the *Native Title Report 2010*, I have been inspired by the issues and perspectives that I encountered during my community visits and by my experiences internationally. ‘Relationship-building’ and ‘effective engagement’ are the common threads that run through both of this year’s Reports.

In Chapter 1 of this Report, I outline my key priorities as Social Justice Commissioner. I consider how the Declaration provides a guiding framework for my work. In particular, I advocate the need for governments and Aboriginal and Torres Strait Islander peoples to work together to develop a national implementation plan for the Declaration. I also set out the themes I will focus on during my five-year term. These themes are about developing stronger and deeper relationships:

- between Aboriginal and Torres Strait Islander peoples and the broader Australian community
- between Aboriginal and Torres Strait Islander peoples and governments
- within Aboriginal and Torres Strait Islander communities.

Chapter 2 develops one of my key priorities, addressing the relationship between Aboriginal and Torres Strait Islander peoples and the broader Australian community through constitutional recognition. In this Chapter, I outline the significance of constitutional reform and argue that it will have real and tangible benefits for all Australians. I then turn to the actions that are necessary for achieving a successful referendum and make recommendations about a process that will ensure these actions are fulfilled. The central importance of engagement and education for both Indigenous and non-Indigenous Australians is emphasised.

Finally in Chapter 3, I outline a case study of recent events in the Fitzroy Valley. I look at the success of community-led alcohol restrictions, an innovative model of local governance and a project being undertaken by the community to address the impacts of Fetal Alcohol Spectrum Disorders (FASD). Key lessons are drawn from the Fitzroy Valley experience to inform the roll out and delivery of government programs and services. The central message of this Chapter is that great things are possible when communities take control of the issues that confront them and when governments and other parties take a role to facilitate this community control.

As with previous reports, Appendix 3 provides a full chronology of significant events in Indigenous affairs during the Reporting Period from 1 July 2009 – 30 June 2010.

## Review of other activities during the Reporting Period

The Reporting Period has seen some positive steps towards greater human rights protection for Aboriginal and Torres Strait Islander peoples.

### National Congress of Australia's First People

During the Reporting Period we saw the hard work and extensive consultations towards a new national representative body for Aboriginal and Torres Strait Islander peoples come to fruition with the establishment of the National Congress of Australia's First People (National Congress).

The National Congress was incorporated in April 2010 and the National Board and Ethics Committee were appointed in May 2010. I look forward to seeing the National Congress grow into a strong, robust voice for Aboriginal and Torres Strait Islander peoples.<sup>22</sup>

### Northern Territory Emergency Response

I am pleased that recent amendments to the Northern Territory Emergency Response (NTER) have gone some way to addressing the concerns that have been raised about the NTER's compliance with human rights standards.<sup>23</sup>

The independent body commissioned to review the NTER, the NTER Review Board, noted the non-compliance with human rights standards has damaged the effectiveness of the measures:

There is intense hurt and anger at being isolated on the basis of race and subjected to collective measures that would never be applied to other Australians. The Intervention was received with a sense of betrayal and disbelief. Resistance to its imposition undercut the potential effectiveness of its substantive measures.

The crisis that prompted the NTER in June 2007 is real. It should remain a national priority for sustained attention and investment by the Australian Government. But the way forward must be based on a fresh relationship.

If the various NTER measures are to operate as a genuine suite of measures there needs to be adjustments in the machinery of government enabling better coordination of services, greater responsiveness to the unique characteristics of each community and higher levels of community participation in the design and delivery of services.<sup>24</sup>

I am strong in the belief that action must be taken to address the difficult issues confronting many of our communities. In fact I have long said that action must be taken to address neglect and abuse. But these actions, if they are to be successful, must get the buy-in of the local community, and must be consistent with human rights. This is how we reset the relationship.

I remain concerned that even with the recent amendments to the NTER, in the opinion of the Australian Human Rights Commission (Commission), there are measures that are not fully compliant with the *Racial Discrimination Act 1975* (Cth) (RDA). These include:

---

22 See National Congress of Australia's First Peoples, *Welcome National Congress of Australia's First Peoples*, <http://nationalcongress.com.au/welcome/> (viewed 10 December 2010).

23 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth). The Race Discrimination Commissioner Innes and I welcomed this as a 'first step': See Australian Human Rights Commission, 'Passage of NTER Amendments a step in the right direction' (Media Release, 22 June 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/61\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/61_10.html) (viewed 10 November 2010).

24 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), pp 9-10. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).



- Practical limitations on the reinstatement of the RDA that emerge due to the absence of a notwithstanding clause in the Bills.
- Delays in the reinstatement of the RDA and state/territory anti-discrimination legislation until 31 December 2010.
- The failure to require consent for measures that are intended to be ‘special measures’ for the purposes of the RDA and Australia’s human rights obligations.
- The broad reach of some categories of the new income management measure that could result in a disproportionate number of Aboriginal people being unnecessarily income-managed.
- Insufficient clarity in the definition of ‘vulnerable welfare payment recipient’ under the income management measures.
- The continuation of the compulsory five-year lease arrangements and their exclusion from the protections against discrimination under the RDA.
- The characterisation of five-year leases as a special measure is inconsistent with the RDA.
- The continuation of the business management areas powers, which are unnecessary and unreasonable.
- The limited monitoring and evaluation measures in place to ensure that reliable evidence is available as to the effectiveness of existing and redesigned NTER measures.<sup>25</sup>

I will continue to monitor this situation and advocate for all of the NTER measures to be fully compliant with the provisions of the RDA.

## Social Justice Unit projects

The Reporting Period has also seen significant gains in some of the projects led by my office at the Commission.

Tom Calma, initiated a number of projects including the Close the Gap Campaign; the Indigenous Human Rights Network of Australia; and the development of community education materials on the Declaration. I am pleased to advance these important projects.

### Close the Gap Campaign

The Close the Gap Campaign for Indigenous Health Equality<sup>26</sup> continues to make strong progress towards achieving the goal of increasing the life expectancy and improving the health of Aboriginal and Torres Strait Islander peoples to that of the non-Indigenous population within a generation.

---

25 Australian Human Rights Commission, *Submission to the Senate Community Affairs Committee Inquiry into the Welfare Reform and Reinstatement of Racial Discrimination Act Bill 2009 and other Bills* (10 February 2010), para 8. At [http://www.humanrights.gov.au/legal/submissions/sj\\_submissions/2010\\_welfare\\_reform.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/2010_welfare_reform.html) (viewed 10 December 2010).

26 For an overview of the campaign see Australian Human Rights Commission, *Close the Gap: Indigenous Health Campaign*, [http://www.humanrights.gov.au/social\\_justice/health/index.html](http://www.humanrights.gov.au/social_justice/health/index.html). A campaign Community Guide is available online at: Close the Gap Campaign Steering Committee, *Close the Gap: Campaign for Aboriginal and Torres Strait Islander Health Equality by 2030* (2006). At [http://www.humanrights.gov.au/social\\_justice/health/ctg\\_community.html](http://www.humanrights.gov.au/social_justice/health/ctg_community.html) (viewed 10 December 2010).

Recent progress includes:

- The Statement of Intent has now been signed by the governments and opposition parties of Western Australia, Queensland, Victoria, the Australian Capital Territory,<sup>27</sup> New South Wales and South Australia. The Northern Territory has indicated its willingness to sign by the end of 2011. The Close the Gap Campaign Steering Committee anticipates that the Statement of Intent will soon achieve national status.<sup>28</sup>
- In August 2009, the National Rugby League held a dedicated Close the Gap round of matches, helping ensure the Campaign's message reaches millions of Australians.
- A Close the Gap – Making It Happen workshop was held on 24–25 June 2010 at the Museum of Australian Democracy (Old Parliament House) in Canberra. Key representatives were invited from the Aboriginal Community Controlled Health Sector, the mainstream health services as well as Indigenous health experts and other stakeholders. Senior representatives from the Australian Government and representatives from the majority of the state and territory governments also attended.<sup>29</sup>

At the time of writing, discussions are continuing with the Minister for Indigenous Health and the Minister for Health and Ageing to progress the commitments to a national plan for achieving Aboriginal and Torres Strait Islander health equality within a generation and a supporting partnership.

### Indigenous Human Rights Network Australia

The Indigenous Human Rights Network Australia (IHRNA) provides information on human rights reporting and campaigns, as well as networking opportunities for people who advocate for Indigenous human rights. IHRNA is supported by the Australian Human Rights Commission, Oxfam Australia and the Diplomacy Training Program.

In April 2010 IHRNA launched its website and social portal.<sup>30</sup>

The IHRNA Steering Committee has expanded to include three new members from around Australia, taking it to a total number of ten members. As at June 2010 the Network included 170 members from around Australia.

In 2011 IHRNA will host a series of regional forums around Australia to allow members to steer the development of the Network, and provide feedback on national issues such as Constitutional reform and progressing the Declaration.

### Community education materials on the Declaration

The Christensen Fund has provided the Commission with generous financial support to develop community education materials on the Declaration. Oxfam Australia has also provided financial support.

---

27 Please note that the ACT Opposition has committed to sign at a future ceremonial occasion.

28 In October 2010, the South Australian Government signed the Statement of Intent with the Northern Territory Government indicating its willingness to sign.

29 See Close the Gap Campaign Steering Committee, *Close the Gap – Making It Happen Workshop Report*, Close the Gap Campaign (2010). This report will be available at [http://www.humanrights.gov.au/social\\_justice/health/index.html](http://www.humanrights.gov.au/social_justice/health/index.html).

30 Indigenous Human Rights Network Australia, *Indigenous Human Rights Network Australia*, [www.ihrna.info](http://www.ihrna.info) (viewed 10 December 2010).

There is great interest but limited knowledge about the Declaration in Aboriginal and Torres Strait Islander communities. These materials will provide a suitable vehicle to build the capacity of communities to advocate for their rights.

In the initial phase of this project three elements of the materials will be produced:

- a double sided poster
- a plain-English Community Guide
- an overview of the Declaration.<sup>31</sup>

These materials are designed to increase understanding about how the Declaration can be used by Aboriginal and Torres Strait Islander people and communities in their daily lives.

The Commission has also secured funding from Oxfam Australia to produce a DVD/documentary on the Declaration. This will build on the materials initially produced.

The Commission intends to continue to seek funding to develop further educational materials and programs to raise awareness and understanding of the Declaration.

## Future directions

At the time of writing, the Gillard Government was returned to office as a minority government. It is my sincere hope that all political parties, and the independent Members of Parliament and Senators, can work together with Aboriginal and Torres Strait Islander peoples to promote true reconciliation based on partnership, trust and mutual respect.

I would also like to take this opportunity to congratulate the member for Hasluck, Ken Wyatt MP, who was elected as the first Aboriginal and Torres Strait Islander member of the House of Representatives.

The priorities that will guide my term are set out in Chapter 1 of this Report. As Social Justice Commissioner my agenda will:

- be guided by the human rights standards, particularly those contained in the *United Nations Declaration on the Rights of Indigenous Peoples*
- focus on developing stronger and deeper relationships:
  - between Aboriginal and Torres Strait Islander peoples and the broader Australian community
  - between Aboriginal and Torres Strait Islander peoples and governments
  - within Aboriginal and Torres Strait Islander communities.

This agenda is consistent with the Commission's priorities for 2010–2012:

- tackling violence, harassment and bullying
- building community understanding and respect for rights.<sup>32</sup>

31 As this report was being finalised the materials were publicly released see M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Community Guide to the Declaration on the Rights of Indigenous Peoples*, Australian Human Rights Commission (2010). At [http://www.humanrights.gov.au/declaration\\_indigenous/index.html](http://www.humanrights.gov.au/declaration_indigenous/index.html) (viewed 16 December 2010).

32 Australian Human Rights Commission, *Our Agenda: Commission Workplan 2010–2012* (2010), p 4. At <http://www.humanrights.gov.au/about/agenda.html> (viewed 10 December 2010).



# Recommendations

---

## Chapter 1: Towards a reconciled Australia: An agenda of hope

### Recommendations

- 1.1 That the Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples to develop a national strategy to ensure the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- 1.2 That the Australian Government introduce legislation into Parliament to require the Attorney-General to provide a formal response to the annual *Native Title Report* and the *Social Justice Report* within a set timeframe.

## Chapter 2: Constitutional reform: Creating a nation for all of us

### Recommendations

- 2.1 That all Australian political parties commit to and participate in the constitutional reform process in good faith to progress recognition of the unique place and the rights of Aboriginal and Torres Strait Islander peoples.
- 2.2 That the Australian Government place constitutional reform on the Council of Australian Governments agenda as a national priority.
- 2.3 That the Australian Government establishes and fully resources a formal process to guide progress towards a referendum that:
  - Includes a commitment to:
    - improve the lives of Aboriginal and Torres Strait Islander peoples
    - ensure the adequate protection of human rights for all Australians
    - ensure a solid foundation upon which to build a reconciled nation.

- Seeks to achieve and maintain bipartisan support, and has a strong focus on public education and facilitating popular ownership of the issues.
  - Includes a strategy that facilitates engagement with Aboriginal and Torres Strait Islander peoples and the broader Australian community.
- 2.4 That the Australian Government adequately resource the provision of advice and assistance to the Expert Panel on Constitutional Recognition of Indigenous Australians including in relation to leadership and engagement, ambassadorial outreach, and technical advice.

## Chapter 3: From community crisis to community control in the Fitzroy Valley

### Recommendations

- 3.1 That the Australian and Western Australian Governments respond to the priorities identified by the Fitzroy Futures Forum. Further, that those responses should be made with and through mechanisms agreed by the Fitzroy Futures Forum.
- 3.2 That the Australian and Western Australian Governments provide immediate funding to drug and alcohol services, mental health services, rehabilitation services and law and culture programs in the Fitzroy Valley.
- 3.3 That the Australian and Western Australian Governments provide ongoing funding and support for the Fitzroy Futures Forum. Further, that the roll out of the Council of Australian Governments Remote Service Delivery Partnership work within this established community governance framework.
- 3.4 That the Australian Government provide adequate resources to the Coordinator General for Remote Indigenous Services to enable him to fulfil his statutory responsibilities in the 29 priority communities.
- 3.5 That the Australian Government work with Aboriginal and Torres Strait Islander peoples to develop a national engagement framework that is consistent with the minimum standards affirmed in the *United Nations Declarations on the Rights of Indigenous Peoples*. Further, that the Australian Government commit to using this framework to guide the development of consultation processes on a case-by-case basis in partnership with the Aboriginal and Torres Strait Islander peoples that may be affected by a proposed legislative or policy measure. This framework will also require the development of regional and local engagement plans.

- 3.6 That the Australian and state/territory governments implement necessary reforms to both their structures and workforce to ensure they have the capacity to engage effectively with Aboriginal and Torres Strait Islander peoples. These reforms should include:
- (i) The introduction of national uniform legislation to mandate the use of *Identified Positions/Criteria* for all positions in the public service that have any involvement with Aboriginal and Torres Strait Islander peoples, organisations and communities.
  - (ii) That relevant officers have the appropriate skills and cultural competency to work with Aboriginal and Torres Strait Islander peoples and communities.
  - (iii) That targeted education and training programs are developed with accredited training providers to facilitate the development of appropriate skills and cultural competency.
- 3.7 That the Australian Government accelerates efforts to consolidate and streamline programs for Aboriginal and Torres Strait Islander communities with an aim to ensure:
- (i) That funding grant programs are simplified and are pooled where multiple grants come from multiple government entities.
  - (ii) That local communities have certainty of long term core funding.
  - (iii) A greater role in planning and decision-making over funding at the community level.
  - (iv) Greater flexibility to respond to local needs.
- 3.8 That the central role of effective governance structures is acknowledged by governments and respected as a form of community empowerment. Where effective governance structures and processes are in place these should form the basis of government engagement with communities. Where governance structures and processes require further development communities and organisations should be appropriately supported in this process.
- 3.9 That community governance structures and processes should be developed by Aboriginal and Torres Strait Islander communities and appropriately supported by governments, with the aim of empowering them to take control of their own identified issues and aspirations. Communities, in engaging both internally and externally, should be guided by the *United Nations Declaration on the Rights of Indigenous Peoples* in exercising the right to self-determination; the principle of free, prior and informed consent; the right to participate in decision-making; and good faith.





# Chapter 1:

## Towards a reconciled Australia: An agenda of hope

.....

### 1.1 Introduction

My son, your eyes search mine  
Hurt and puzzled by colour line  
Your black skin as soft as velvet shine  
What can I tell you son of mine  
I could tell you of heartbreak, hatred blind  
I could tell of crimes that shame mankind  
Of brutal wrongs and deeds malign  
Of rape and murder son of mine  
But instead I will tell of brave and fine  
When lives of black and white entwine  
When men, in brotherhood combine  
This I would tell you son of mine.<sup>1</sup>

These words of Oodgeroo Noonuccal, or Kath Walker, a hero of the struggle of Aboriginal and Torres Strait Islander peoples rights, captures the essence of the challenges confronting us here in Australia in pursuit of a reconciled nation. The acknowledgement of the ‘brutal wrongs’, but with the hope of the ‘lives of black and white entwined’, are needed and still ring true as we enter the second decade of the 21st century.

In present day Australia, there is still too much heartbreak and misunderstanding. After more than 200 years together, we still long for a time ‘when men in brotherhood combine’ in a truly reconciled Australia.

It is a fact that Aboriginal and Torres Strait Islander peoples continue to be overrepresented in every negative socio-economic indicator.<sup>2</sup> Each and every one of these indicators marks a systematic incidence of Aboriginal and Torres Strait Islander peoples not being able to exercise and enjoy their fundamental human rights the same rights that the vast majority of Australians take for granted.

When I first assumed the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner (Social Justice Commissioner), I looked at these and an array of other human rights issues in trying to determine my priorities for my five-year term. I concluded that the focus for my term must be underpinned by two unshakeable and personal commitments:

- to address disadvantage still faced by Aboriginal and Torres Strait Islander peoples
- to work to achieve a truly reconciled Australia.

---

1 K Walker, *My People: A Kath Walker Collection* (1970), p 55.

2 See SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

I believe we need to ask the question: can the nation ever be truly reconciled while Aboriginal and Torres Strait Islanders continue to live in such relative disadvantage? The systemic disadvantage faced by Aboriginal and Torres Strait Islander communities has been extensively documented in the *Overcoming Indigenous Disadvantage Report*.<sup>3</sup> Overcoming this disadvantage is reconciliation in action and it will require a nation-building effort.

With the idea of addressing disadvantage as a nation-building exercise in mind, I have visited Aboriginal and Torres Strait Islander communities and organisations in remote parts of Australia, in our regions and in urban centres. During these visits I listened and learnt, in an effort to understand the issues that these diverse communities face, and what solutions they are developing. I heard time and again about a sense of hurt in our communities and a feeling of disenfranchisement and disempowerment from the instruments of power.

I have also attended sessions of international human rights mechanisms to better understand how international engagement can assist our efforts to ensure Australia honours its commitments to respect, protect and fulfil our rights.

These activities have helped sharpen my focus.

In this Chapter, I outline my agenda as Social Justice Commissioner. This is an agenda of hope. It is an agenda which aims to unleash the potential of our people, and maximise the capabilities of each and every Aboriginal and Torres Strait Islander person, an agenda that tackles the root causes of Indigenous inequality.

It is clear that addressing the disadvantage in Aboriginal and Torres Strait Islander communities will require the intergenerational commitment of the whole nation. We will need to work together to reframe our approach – to create better pathways of understanding built on relationships of mutual trust and respect. This agenda places fundamental importance on building positive and healthy relationships.

In this Chapter I first outline how my focus on relationships will be guided by human rights standards, in particular the *United Nations Declaration on the Rights of Indigenous Peoples*<sup>4</sup> (the Declaration). One of my overarching priorities is advocating that the Australian Government work with Aboriginal and Torres Strait Islander peoples to progress the full implementation, of both the spirit and intent, of the Declaration.

I then explain the three areas in which I believe rebuilding relationships can strengthen the foundation necessary for addressing Aboriginal and Torres Strait Islander disadvantage. Relationships must be either reset or established:

- between Aboriginal and Torres Strait Islander peoples and the broader Australian community
- between Aboriginal and Torres Strait Islander peoples and governments
- within Aboriginal and Torres Strait Islander communities.

I argue that resetting and strengthening these relationships can move Australia towards a reconciled nation by making advances to address Aboriginal and Torres Strait Islander disadvantage.

---

3 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

4 GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007). At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

**As Social Justice Commissioner, I will:**

- **be guided by human rights standards, particularly those contained in the *United Nations Declaration on the Rights of Indigenous Peoples***
- **focus on developing stronger and deeper relationships:**
  - **between Aboriginal and Torres Strait Islander peoples and the broader Australian community**
  - **between Aboriginal and Torres Strait Islander peoples and governments**
  - **within Aboriginal and Torres Strait Islander communities.**

## 1.2 Human rights: The overarching framework

All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without distinction of any kind, such as race, creed, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person.<sup>5</sup>

Relationships cannot be reset without a clear focus on the human rights of Aboriginal and Torres Strait Islander peoples. But before dealing with relationships, I want to outline the human rights framework that will guide my agenda.

My role is to promote the enjoyment and exercise of human rights of Aboriginal and Torres Strait Islander peoples.<sup>6</sup> As a consequence I examine the challenges faced by Aboriginal and Torres Strait Islander peoples across this nation through a human rights lens.

Human rights provide governments with a set of minimum legal standards, which if applied equally to all people, establish a framework for a society to foster dignity and equality. In other words, human rights assist in measuring how the people of a nation look after each other.

### (a) The value of human rights

Human rights are taken for granted by many Australians. A recent assessment of political rights and civil liberties gave Australia the highest possible score for the attainment of political rights and civil liberties.<sup>7</sup>

In general, Australians are not subjected to cruel and inhumane treatment; Australia has an independent judicial system, freedom of speech and a free press. All of these things are human rights. All of these rights help promote a functioning and stable democratic society. Indeed, in nations where these rights are not readily realised, it is their absence that inhibits a functioning and stable democratic society.

5 UN Population Division, Department of Economic and Social Affairs, *Report Of The International Conference on Population and Development*, UN Doc A/CONF.171/13 (1994), ch 2, Principle 1. At <http://www.un.org/popin/icpd/conference/offeng/poa.html> (viewed 13 December 2010).

6 *Australian Human Rights Commission Act 1986* (Cth), s 46C.

7 Freedom House, *Country Report 2009 Australia*, <http://www.freedomhouse.org/template.cfm?page=22&year=2009&country=7559> (viewed 27 April 2010).

Human rights are not just abstract concepts that exist in documents such as treaties, conventions and declarations alone. They become meaningful only when they are able to be exercised.

For many Australians, the realisation of economic, social and cultural rights is also a given. Australia has functioning health and social security systems. There is access to education and housing services and protections against discrimination in employment. Again it is the realisation of these rights that makes Australia a successful and prospering nation.

On the other hand, Aboriginal and Torres Strait Islander communities cannot take these rights for granted. One of the major differences between the wider Australian population and Aboriginal and Torres Strait Islander communities has been the long inability to realise our human rights. For instance:

- we were not counted as citizens of Australia until 1967
- our children were removed in the Stolen Generations as a result of legislation and policies of forced removal and assimilation
- as a result of the Northern Territory Emergency Response and the suspension of the *Racial Discrimination Act 1975* (Cth) in 73 Aboriginal communities in the Northern Territory people had only limited protection against racial discrimination for the sole reason that they are Indigenous.<sup>8</sup>

In addition to these policies and laws that overtly diminished our rights, institutional systems that have impeded the realisation of our rights have contributed to:

- Aboriginal and Torres Strait Islander men and women have a life expectancy approximately 11.5 years and 9.7 years younger compared to the broader Australian population.<sup>9</sup>
- Mortality rates of our children under four are between two and four times that of the broader Australian population.<sup>10</sup>
- Only 63.4% of year five Aboriginal and Torres Strait Islander students achieving the national minimum standard for reading compared with 92.6% of non-Indigenous students – this is a gap of 29.2% points.<sup>11</sup>

These are all human rights issues. In fact all of the issues our communities deal with on a day-to-day basis – including effective engagement, poverty, education, health, protection of culture and languages, incarceration rates, and the protection of women and children – are human rights issues. Professor Mick Dodson argues that:

The existence of human rights standards is not the source of Indigenous disadvantage. Human rights do not dispossess Indigenous peoples, they do not marginalise them, they do not cause their poverty, and they do not cause gaps in life expectancy and life

---

8 The Australian Government has gone some way to lifting the suspension of the RDA with the passage of the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth). Race Discrimination Commissioner Innes and I welcomed this as a 'first step': See Australian Human Rights Commission, 'Passage of NTER Amendments a step in the right direction' (Media Release, 22 June 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/61\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/61_10.html) (viewed 10 November 2010).

9 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009), p 4.4. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

10 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009), p 4.13. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

11 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009), p 4.41. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

outcomes. It is the denial of rights that is a large contributor to these things. The value of human rights is not in their existence; it is in their implementation.<sup>12</sup>

By articulating the issues and aspirations of Aboriginal and Torres Strait Islander communities through the language of human rights we will improve the opportunity for them to be realised. Logically following on from this, I believe that human rights standards represent best-practice guidelines for dealing with disadvantaged communities.

**(b) Aboriginal and Torres Strait Islander peoples' engagement with the international human rights framework**

Aboriginal and Torres Strait Islander people have been actively engaged in the international human rights system for more than 30 years, recognising the power of the international human rights stage to achieve both international and domestic change. Aboriginal and Torres Strait Islander people actively participated in the development, drafting and lobbying for the Declaration.

Delegations of Aboriginal and Torres Strait Islander peoples have also been attending international meetings of Indigenous peoples from around the world for many years including the Working Group on Indigenous Populations; the United Nations Permanent Forum on Indigenous Issues (UNPFII); and, more recently the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

The United Nations Secretary-General, Ban Ki-moon, opened the UNPFII this year with a statement that recognised Indigenous peoples as 'full and equal members of the United Nations'. He called on 'all Governments, indigenous peoples, the UN system and all other partners to ensure that the vision behind the Declaration becomes a reality for all'.<sup>13</sup>

For a long time, the Australian Government effectively ignored recommendations from United Nations committees and experts about improving the circumstances of Aboriginal and Torres Strait Islander peoples. However, more recently the Australian Government has taken a number of steps to improve Australia's engagement with international standards, including:

- formally endorsing the Declaration<sup>14</sup>
- extending an open invitation to all of the United Nations special procedures – the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people conducted an official country visit to Australia in August 2009<sup>15</sup>

---

12 M Dodson, 'Foreword', in Amnesty International Australia, *United Nations Declaration on the Rights of Indigenous Peoples* (2001) 3, p 3.

13 Secretary-General Ban Ki-moon, *Remarks at opening of the UN Permanent Forum on Indigenous Issues*, 9th session (19 April 2010). At [http://www.un.org/apps/news/infocus/speeches/search\\_full.asp?statID=790](http://www.un.org/apps/news/infocus/speeches/search_full.asp?statID=790) (viewed 8 June 2010).

14 See The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At [http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un\\_declaration\\_03apr09.aspx](http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx) (viewed 19 October 2010).

15 In March 2010 the Special Rapporteur released his report J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010). At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010). It was discussed at the 15th session of the Human Rights Council from 13 September – 1 October 2010. This report provides a real opportunity for the Australian Government and Indigenous peoples in Australia to reflect on how the rights of Indigenous peoples in Australia could be better implemented, protected and realised in Australia.

- committing \$300 000 (allocated by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)) over three years to enable Aboriginal and Torres Strait Islander people to participate in international forums focused specifically on the rights of Indigenous peoples.

As part of the international human rights framework the Australian Government has obligations to report to United Nations treaty bodies responsible for monitoring the treaties to which Australia is a party, and to the Human Rights Council through the Universal Period Review process.

Aboriginal and Torres Strait Islander peoples also have opportunities to participate in that framework. For example, we can contribute to these processes by submitting shadow reports about our concerns.

There are currently two coordinated opportunities for Aboriginal and Torres Strait Islander people to engage with the international human rights framework: the Indigenous Peoples' Organisations Network (IPO Network); and the Indigenous Human Rights Network Australia (IHRNA).

**Text Box 1.1: Coordinated opportunities for international engagement**

**The IPO Network**

The IPO Network is an informal affiliation of Indigenous organisations and individuals who meet two-three times per year to:

- discuss human rights concerns
- provide updates on activities undertaken
- develop strategies for participation at international forums
- discuss the preparation of shadow reports to the various international reporting processes.

The IPO is currently hosted by the Australian Human Rights Commission, who are responsible for administering the FaHCSIA international engagement support funding.

**IHRNA**

IHRNA is a joint project established by Oxfam Australia, the Australian Human Rights Commission and the Diplomacy Training Program. IHRNA is an online network of human rights advocates focused on the rights of Indigenous peoples.

IHRNA has two specific focus areas:

- providing information about the international human rights framework and how it might be used at the domestic level
- a social networking portal to enable advocates to network and exchange ideas, and develop collective solutions to issues.<sup>16</sup>

**(c) The United Nations Declaration on the Rights of Indigenous Peoples**

The United Nations General Assembly adopted the Declaration on 13 September 2007. The adoption of the Declaration has generated substantial attention to the rights of Indigenous peoples at the international level. This is evidenced by the

---

<sup>16</sup> For more information see Indigenous Human Rights Network Australia, *IHRNA*, [www.ihrna.info](http://www.ihrna.info) (viewed 10 December 2010).

specific focus given to the implementation of the Declaration in international forums such as the UNPFII, EMRIP and the Human Rights Council.

The United Nations High Commissioner for Human Rights identified the Declaration as ‘the United Nations’ key tool in advancing the rights of indigenous peoples’.<sup>17</sup>

(i) *Minimum standards*

The Declaration contains the ‘minimum standards for the survival, dignity and well-being of the indigenous peoples of the world’.<sup>18</sup> In doing so, it elaborates the rights already set out in human rights instruments, including the treaties to which Australia is a party. In many ways, the Declaration reflects customary international law.<sup>19</sup>

Therefore, the Declaration can and should be used to inform our understanding of how existing, universal human rights apply to the situations faced by Indigenous peoples worldwide.<sup>20</sup> It is not simply an ‘aspirational’ document.

The Declaration is a remedial instrument, designed to rectify a history of failings when it comes to protecting Indigenous peoples’ human rights. Any reading of the text of the Declaration makes it clear that it offers a programmatic and principled approach to dealing with Indigenous disadvantage holistically.

(ii) *What does the Declaration say about the rights of Aboriginal and Torres Strait Islander peoples?*

As already noted, the Declaration catalogues in one place existing human rights standards and interprets them as they apply to Indigenous peoples. The Declaration can be divided up into broad sections that deal with a range of different themes.

---

17 United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/34 (2010), para 92. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

18 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 43. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

19 For a discussion of the legal status of the Declaration, see P Joffe, ‘Canada’s Opposition to the UN Declaration: Legitimate Concerns or Ideological Bias?’ in J Hartley, P Joffe and J Preston (eds), *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action* (2010) 70, pp 85–93; Permanent Forum on Indigenous Issues, *Report on the eighth session*, UN Doc E/C.19/2009/14 (2009), Annex, General Comment 1, paras 6–13. At [http://www.un.org/esa/socdev/unpfii/documents/E\\_C\\_19\\_2009\\_14\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/E_C_19_2009_14_en.pdf) (viewed 16 June 2010).

20 For example, the Committee on the Elimination of Racial Discrimination has recommended that the Declaration be used as a guide to interpret the obligations of the United States of America under the *International Convention on the Elimination of All Forms of Racial Discrimination* relating to indigenous peoples: 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), para 29. At <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm> (viewed at 19 October 2010).

### **Text Box 1.2: Key themes in the Declaration<sup>21</sup>**

#### **The preamble**

The preamble sets the scene for the Declaration. It makes it clear that the Declaration is a positive document that sets out standards to improve the circumstances of Indigenous peoples and to address disadvantage and discrimination.

#### **Foundational rights (articles 1–6)**

Confirms that Indigenous peoples have the right to be treated equally without discrimination, including to enjoy rights as a group or collective, and the right to self-determination.

#### **Life and security (articles 7–10)**

These rights protect Indigenous peoples' basic needs including the right to life, and freedom from genocide and forcible removals.

#### **Language, cultural and spiritual identity (articles 11–13)**

These rights recognise the central role that culture has in Indigenous identities.

#### **Education, information and employment rights (articles 14–17)**

These rights provide for equal access to education, employment and information. These rights are to be exercised in a manner that reflects Indigenous peoples' cultural diversity.

#### **Participation, development and economic and social rights (articles 18–24)**

Ensures that Indigenous peoples can play an active role in their development and in decision-making that impacts upon them.

#### **Rights to country, resources and knowledge (articles 25–32)**

These articles recognise the rights that Indigenous peoples have to their lands, territories and resources including knowledge. These rights feature prominently in the Declaration, reflecting their fundamental importance to Indigenous peoples and their identities.<sup>22</sup>

#### **Self-governance (articles 33–37)**

These articles provide greater detail as to how the rights to self-determination and self-government can operate.

#### **Implementing the Declaration (articles 38–42)**

These articles affirm that action should be taken at the international and domestic level to ensure that Indigenous peoples can realise the rights in the Declaration.

#### **Interpreting the Declaration (articles 43–46)**

These articles provide significant guidance as to how to interpret the substantive rights in the Declaration.

21 For more information on the Declaration see: M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, Australian Human Rights Commission (2010). At [http://www.humanrights.gov.au/declaration\\_indigenous/index.html](http://www.humanrights.gov.au/declaration_indigenous/index.html) (viewed 15 December 2010).

22 For further discussion on Indigenous peoples rights to lands, territories, resources and knowledge's, see M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2010), ch 1.



## Our right of self-determination and to participate in decisions that affect us

Self-determination is a central right of the Declaration. It is a right of all peoples. All other rights in the Declaration help to achieve self-determination for Indigenous peoples.

The recognition of the right of self-determination is a mechanism for re-empowering Indigenous peoples:

[T]he right of self-determination of Indigenous peoples should ordinarily be interpreted as their right to negotiate freely their status and representation in the State in which they live. This might best be described as a kind of 'belated State-building', through which Indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed and just terms, after many years of isolation and exclusion. This does not mean the assimilation of Indigenous individuals as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the [nation], on agreed terms.<sup>23</sup>

### Text Box 1.3: The right of self-determination

Self-determination means that as collectives, Aboriginal and Torres Strait Islander peoples should:

- have a **choice** in determining how our lives are governed
- be able to **participate** in decisions that affect us
- have **control** over our lives and development.

Exercising the right of self-determination means we have the **freedom to live well and to live according to our values and beliefs**.<sup>24</sup>

Self-determination is also about establishing equitable relationships. As such, it is a process and not a single event.

Aboriginal and Torres Strait Islander peoples' right of self-determination is not something to be feared by the broader Australian community. The realisation of self-determination has the potential to result in inclusive government, in which Aboriginal and Torres Strait Islander peoples rightfully have a role in determining their priorities and destiny.

Erica Daes, an important advocate for Indigenous peoples' rights in the international arena, argues that the right of self-determination is the 'right to demand full democratic partnership' in society, and consequently:

[T]his means that the existing State has the duty to accommodate the aspirations of indigenous peoples through constitutional reforms designed to share power democratically. It also means that indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and to exercise their right to self-determination by this means and other peaceful ways, to the extent possible.<sup>25</sup>

23 E Daes, *Discrimination against Indigenous people – Explanatory note concerning the draft declaration on the rights of Indigenous peoples*, UN Doc E/CN.4/Sub.2/1993/26/Add.1 (1993), para 26.

24 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, Australian Human Rights Commission (2010), p 24. At [http://www.humanrights.gov.au/declaration\\_indigenous/index.html](http://www.humanrights.gov.au/declaration_indigenous/index.html) (viewed 15 December 2010).

25 E Daes, *Discrimination against Indigenous people – Explanatory note concerning the draft declaration on the rights of Indigenous peoples*, UN Doc E/CN.4/Sub.2/1993/26/Add.1 (1993), para 25.

A necessary component of the right of self-determination is effective participation in decision-making by Indigenous peoples. Creating mechanisms to ensure effective participation in decision-making is fundamental to resetting the relationship between Aboriginal and Torres Strait Islander peoples and the Australian Government.

The Declaration affirms Indigenous peoples' collective rights to decision-making through the principle of free, prior and informed consent (see Appendix 4 for a detailed explanation of this principle).

### (iii) *Australia and the Declaration*

The Declaration should be used as the overarching framework to guide the realisation of the rights of Aboriginal and Torres Strait Islander peoples. It should also be the benchmark against which the actions of the Australian Government are assessed.

As a party to seven of the major human rights treaties,<sup>26</sup> Australia has already made a commitment to the international community to respect, protect and fulfil our human rights in Australian law and practice.<sup>27</sup>

At the time of adoption, Australia was one of only four States to vote against the Declaration in the General Assembly.<sup>28</sup> On 3 April 2009, the Australian Government reversed Australia's position and formally supported the Declaration.

By supporting the Declaration, Australia joined 'the international community to affirm the aspirations of all Indigenous peoples'.<sup>29</sup> As stated by the Minister for Families, Housing, Community Services and Indigenous Affairs (the Minister for Indigenous Affairs), in her Statement of Support for the Declaration:

Today, Australia takes another important step in re-setting the relationship between Indigenous and non-Indigenous Australians and moving forward towards a new future.

The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians.<sup>30</sup>

As the Minister for Indigenous Affairs notes, the Declaration promotes the central importance of the relationship between Indigenous peoples and governments to realise rights. The Declaration can also be used to create the institutional structures, arrangements and processes needed for Indigenous peoples to be able to effectively engage in a relationship with governments based on mutual respect. This is clear from the preamble which states the General Assembly is:

---

26 See Attorney-General's Department, *Human Rights*, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination\\_Humanrights](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrights) (viewed 10 December 2010).

27 For a discussion of the international obligations assumed by Australia in entering into human rights treaties, see Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009), pp 13–15. At [http://www.humanrights.gov.au/legal/submissions/2009/200906\\_NHRC.html](http://www.humanrights.gov.au/legal/submissions/2009/200906_NHRC.html) (viewed 19 October 2010).

28 General Assembly, *Official Records*, 107th plenary meeting, 61st session, UN Doc A/61/PV.107 (13 September 2007), p 19. At <http://www.un.org/depts/dhl/resguide/r61.htm> (viewed 19 October 2010).

29 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At [http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un\\_declaration\\_03apr09.aspx](http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx) (viewed 19 October 2010).

30 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At [http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un\\_declaration\\_03apr09.aspx](http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx) (viewed 19 October 2010).

*convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples.<sup>31</sup>

A reform agenda that is borne out of and imbedded in the normative standards of human rights should guide this new relationship. Agreement-making guided by the Declaration can lead to true and lasting reconciliation in Australia.

### *(iv) Now is the time for action*

Well over a year has now passed since the Minister for Indigenous Affairs delivered Australia's statement of support for the Declaration. It is now time for the Australian Government to take concrete steps towards implementing the Declaration in all laws and policies which can then provide a base upon which we can rebuild our relationships with the Government.

Australia has an opportunity to demonstrate international leadership by committing to a comprehensive plan for implementing the Declaration. Other countries have already started on this path.<sup>32</sup>

Article 38 of the Declaration is explicit in calling on States to implement a reform agenda guided by the Declaration, 'States in consultation and cooperation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration'.

Following his recent mission to Australia, the Special Rapporteur recommended that:

The Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration.

The Government should pursue constitutional or other effective legal recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples in a manner that would provide long-term security for these rights.<sup>33</sup>

The Special Rapporteur's report on his mission to Australia itself makes recommendations that provide the Australian Government significant guidance on how to implement a reform agenda guided by the Declaration and other relevant international human rights standards.<sup>34</sup>

---

31 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 18. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 19 October 2010).

32 For example, Bolivia has adopted a law to give full legal effect to the provisions of the Declaration in domestic law. Bolivia, Ecuador and Nepal have all used the Declaration as a normative reference in constitutional revision processes. In Belize, the Supreme Court used the Declaration to guide its interpretation of the Constitution to uphold the rights of Maya villages over their traditional land. See J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 9th session, UN Doc A/HRC/9/9 (2008), paras 52-54. At <http://unsr.jamesanaya.org/PDFs/Annual2008.pdf> (viewed 29 September 2010).

33 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms, Addendum: The situation of indigenous peoples in Australia*, James Anaya, UN Doc A/HRC/15/37Add.4 (2010), paras 74-75. At <http://unsr.jamesanaya.org/PDFs/Australia3.pdf> (viewed 23 July 2010). See also: J Anaya, *The UN Declaration on the Rights of Indigenous Peoples, Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya to the Expert Mechanism on the Rights of Indigenous Peoples, 3<sup>rd</sup> session, agenda item 4 (15 July 2010). At [http://www.humanrights.gov.au/social\\_justice/international\\_docs/2010/EMRIP\\_rapporteur2010.doc](http://www.humanrights.gov.au/social_justice/international_docs/2010/EMRIP_rapporteur2010.doc) (viewed 23 July 2010).

34 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms, Addendum: The situation of indigenous peoples in Australia*, James Anaya, UN Doc A/HRC/15/37Add.4 (2010). At <http://unsr.jamesanaya.org/PDFs/Australia3.pdf> (viewed 23 July 2010).

In addition to addressing the specific recommendations of the Special Rapporteur, the Australian Government, working with the states and territories, in conjunction with Aboriginal and Torres Strait Islander peoples and organisations, should develop a national implementation plan for the Declaration. A plan should include key objectives, targets and an evaluation framework to measure progress and success.

I believe that the implementation of the Declaration within Australia is the principal means of resetting the relationship between the Australian Government and Aboriginal and Torres Strait Islander peoples.

### **(d) How will the Declaration inform my agenda?**

Establishing proper frameworks for engagement at both the national and international level guided by the implementation of the Declaration will be a key priority during my term as Social Justice Commissioner.

As a Commissioner of Australia's national human rights institution (NHRI), my functions provide a unique opportunity to be a conduit between the international and national arenas. For instance, EMRIP has recognised the positive role of NHRIs in noting the

important role of national human rights institutions and regional human rights mechanisms in protecting and promoting the rights of indigenous peoples and in implementing the United Nations Declaration on the Rights of Indigenous Peoples.<sup>35</sup>

The Special Rapporteur has specifically acknowledged the positive contributions of my office:

The Special Rapporteur considers the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner within the Australian Human Rights Commission to be an exceptional model for advancing the recognition and protection of rights of indigenous peoples.<sup>36</sup>

Bearing this in mind, I will use the Declaration to guide my work. I will also use it as the primary benchmark against which to measure the effectiveness of governments' actions frankly and fearlessly in my annual *Social Justice Report* and *Native Title Report*, and in other reporting and research I conduct.

To give more effect and accountability to my Reports, I consider it appropriate that the Australian Government should be required to provide a formal response to my reports.

In its 2003 inquiry into progress towards reconciliation, the Senate Legal and Constitutional References Committee recommended 'that the Government should be required by statute to respond to the reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner'.<sup>37</sup>

---

35 Expert Mechanism on the Rights of Indigenous Peoples, *Report of the 2nd Session*, UN Doc A/HRC/12/32 (2009), p 5. At <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/documentation.htm> (viewed 10 December 2010).

36 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: The situation of indigenous peoples in Australia*, UN Doc A/HRC/15/37Add.4 (2010), para 78. At <http://unsr.jamesanaya.org/PDFs/Australia3.pdf> (viewed 23 July 2010).

37 Senate Legal and Constitutional References Committee, Parliament of Australia, *Reconciliation: Off track* (2003), p xii (recommendation 9). At [http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/reconciliation/report/report.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/reconciliation/report/report.pdf) (viewed 19 October 2010).

The Special Rapporteur also recommended that the *Social Justice Report* and *Native Title Report* be 'given greater attention in government administration to promote a higher level of accountability and sensitivity to human rights commitments.'<sup>38</sup>

To promote transparency and accountability, I believe that the Attorney-General should be required by legislation to table a response to the *Social Justice Report* and the *Native Title Report* in Parliament within a set timeframe. This response should indicate how the Government intends to address the recommendations made in these reports.

As the Social Justice Commissioner, I will continue to use my Reports to inform dialogue at the international and national levels on developing methods for implementing the Declaration. I am also committed to working with all Australian governments and with Aboriginal and Torres Strait Islander peoples to progress a national implementation plan for the Declaration. I look forward to advancing such a plan in the spirit of constructive relationships.

**As Social Justice Commissioner, I will:**

- **be guided by the Declaration in the performance of my statutory functions, including in the preparation of my annual *Social Justice Report* and *Native Title Report***
- **recommend that the Australian Government introduce legislation into Parliament to require the Attorney-General to provide a formal response to the annual *Social Justice Report* and *Native Title Report***
- **monitor and report on the Australian Government's progress in implementing the recommendations contained in the annual *Social Justice Report* and *Native Title Report***
- **work with the Australian Government to formally implement the recommendations of the Special Rapporteur**
- **work with the Australian Government, state/territory governments and Aboriginal and Torres Strait Islander peoples and organisations to develop a national implementation plan for the Declaration**
- **monitor and report on the Australian Government's performance, using the Declaration as an objective guide.**

### 1.3 Addressing Aboriginal and Torres Strait Islander disadvantage by rebuilding relationships

At the centre of my priorities is the belief that in order to address Aboriginal and Torres Strait Islander disadvantage, stronger and deeper relationships must be established:

- between Aboriginal and Torres Strait Islander peoples and the broader Australian community

38 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 78. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

- between Aboriginal and Torres Strait Islander peoples and governments
- within Aboriginal and Torres Strait Islander communities.

Relationships cannot be established where there is mistrust, misunderstanding, intolerance and a lack of acceptance, dialogue and respect. Therefore relationships must be rebuilt on a strong foundation of understanding, tolerance, acceptance, dialogue, respect, trust and reciprocated affection.

Building stronger, deeper relationships with these foundations offers the Australian nation an opportunity for healing. By respecting and celebrating differences and truly reconciling with the past Australians can advance together, as one unified nation.

**(a) Promoting better relationships between Aboriginal and Torres Strait Islander peoples and the broader Australian community**

And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

Our hope is for a united Australia that respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.<sup>39</sup>

When the National Apology to Australia's Indigenous Peoples (National Apology) was made in February 2008, I believed Australia was ready for a new, stronger, deeper relationship with its first peoples.<sup>40</sup> On that day there was a palpable sense of us coming together as a nation. Indigenous and non-Indigenous Australians sat together, held each other and cried together. The nation took a great stride forward towards true reconciliation – but somehow we have since lost momentum.

Despite much goodwill, there are several tough issues we all have to confront, as a nation, if we are going to reset this relationship. I will focus on two elements that I believe are central to reconstructing this relationship:

- addressing racism faced by Aboriginal and Torres Strait Islander peoples, at the individual and the systemic level
- advancing reconciliation between Aboriginal and Torres Strait Islander peoples and the broader Australian population.

It is my view that if we are to improve this relationship, we need to start by disregarding preconceptions of each other and build understanding.

**Text Box 1.4: Sometimes our closest friend is the one who has travelled the greatest distance to be our friend.**

**Towards a reconciled Australia – Address to the National Press Club**

A non-Indigenous mate of mine hadn't ever had very much to do with Aboriginal or Torres Strait Islander people. In 2008 he found himself working for the Anangu board of an organisation based in Alice Springs for 8 months. Both he and the Anangu approached 8 or 9 months of what was going to be a working relationship with open minds and open hearts but there was, understandably, some stand-offishness on both sides.

39 Council for Aboriginal Reconciliation, *Australian Declaration: Toward Reconciliation* (2000). At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/12/pg3.htm> (viewed 2 June 2010).

40 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, pp 167-173 (The Hon Kevin Rudd MP, Prime Minister). At <http://www.aph.gov.au/hansard/rep/dailys/dr130208.pdf> (viewed 10 November 2010).

The Anangu mob offered their traditionally soft handshakes with averted eyes. My mate offered his firm handshake, puzzled at the averted eyes. Gradually though, after some weeks of working together and learning a bit about each other's cultures and ways of going about things, eyes met, smiles crept onto faces, names were remembered, jokes were shared – tentatively at first – then they got more robust! Tucker was shared, families were introduced, and invitations were extended.

It's now almost three years since they worked together but the friendships remain. The Anangu mob would ring him when they came to Adelaide. Eyes light up when they meet – there's laughter and smiles and shared stories and tucker and beer.

My mate travelled up to one of the remote communities to attend the funeral of one of the Board members' wives. He was invited to speak. He was welcomed into the mob in a way he could never have imagined. He reckons his time with the Anangu mob was one of the joys of his life and the friendships survive to this day.

I read somewhere the following observation which has stayed with me for a lot longer than the name of the person who made it. It's this.

Sometimes our closest friend is the one who has travelled the greatest distance to be our friend.

So it was with my mate from Adelaide.

So it will be with regard to the relationship between Aboriginal and Torres Strait Islanders and the rest of the Australian people.<sup>41</sup>

During our history together in this country, there have been many stories of apprehension between black and white. On most occasions, as was the experience with my friend, these apprehensions dissipate when we make a choice to understand each other's worlds. However, if we do not make that choice, the lack of understanding has the potential to lead to intolerance and even conflict. Often in Australia, that lack of understanding is portrayed in racism.

### (i) Racism

Despite a sense of pride that we are the land of the fair go, unfortunately racism is still common across Australia.

Recent surveys conducted among 12 000 people, found that approximately 90% of respondents consider that racial prejudice is still a problem in Australia.<sup>42</sup> The *Australian Reconciliation Barometer* shows that most Australians felt there was a 'high' level of prejudice between Indigenous and non-Indigenous Australians.<sup>43</sup> Other national research reveals that about 20% of Aboriginal and Torres Strait Islander adults report regular experiences of racism.<sup>44</sup>

41 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Towards a reconciled Australia* (Speech delivered at the National Press Club, Canberra, 3 November 2010). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2010/20101103\\_npc.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20101103_npc.html) (viewed 10 December 2010).

42 K Dunn, A Kamp, W Shaw, J Forrest and Y Paradies 'Indigenous Australians' attitudes towards multiculturalism, cultural diversity, 'race' and racism', *Journal of Australian Indigenous Issues*, forthcoming. See also Australian Human Rights Commission, *Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (2010), paras 76-78. At [http://www.humanrights.gov.au/legal/submissions/united\\_nations/ICERD2010.html](http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html) (viewed 10 December 2010).

43 Reconciliation Australia, *Australian Reconciliation Barometer: Comparing the attitudes of indigenous people and Australians overall* (2009), pp 38-39. At [http://www.reconciliation.org.au/extras/file.php?id=81&file=FINAL\\_Australian\\_Reconciliation\\_Barometer\\_Comparative\\_Report.pdf](http://www.reconciliation.org.au/extras/file.php?id=81&file=FINAL_Australian_Reconciliation_Barometer_Comparative_Report.pdf) (viewed 10 December 2010).

44 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey 2002* (2004). At <http://abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/2575DCC732E7EE9CCA25765E001589D4?opendocument> (viewed 10 December 2010).

Racism has serious health, social and economic consequences for individuals, communities and societies. It has been associated with depression, anxiety, high blood pressure, heart disease, smoking, alcohol and substance abuse as well as poor employment and educational outcomes.<sup>45</sup>

Racism has the potential to do considerable damage to an entire society, regardless of who the victims and the perpetrators are. As highlighted by ANTaR:

Myths and stereotypes are a key component of racism:

- they reduce a range of differences in people to simplistic categorisations
- transform assumptions about particular groups of people into ‘realities’
- are used to justify status quo or persisting injustices
- reinforce social prejudice and inequality

Labeling of Indigenous Australians including stereotypes such as dark skin, despair, levels of alcohol consumption, laziness, levels of intelligence, ability to work and care for children, and levels of criminality are all part of the myths and stereotypes that perpetuate racism in Australia.<sup>46</sup>

### Text Box 1.5: Racial Discrimination

The *Racial Discrimination Act 1975* (Cth) (RDA) was the first federal unlawful discrimination statute to be enacted in Australia. The Act implements, at the domestic level, the *International Convention on the Elimination of all Forms of Racial Discrimination* (ICERD).

There are two main forms of racism prohibited by the RDA – direct and indirect racism.<sup>47</sup>

#### Direct racism

Section 9(1) prohibits what is generally known as ‘direct’ race discrimination. An example of direct racism might look like this:

An Aboriginal employee is told by a senior supervisor that he should not apply for a promotion as he is an ‘Abbo’ and is therefore incapable of fulfilling the role.<sup>48</sup>

#### Indirect racism

Section 9(1A), which was inserted into the RDA in 1990, prohibits ‘indirect’ race discrimination. An example of indirect racism might look like this:

An Indigenous complainant employed as a trainee alleged that because of his race, he was not provided with adequate training, support or feedback and his employment was terminated.

The employer claimed the complainant did not engage in self-directed training to build his experience and failed to pass required assessments. The employer said they had to reduce staff to cut costs and the complainant’s employment was terminated because he was not competent.<sup>49</sup>

45 A Larson, M Gilles, P Howard and J Coffin, ‘It’s enough to make you sick: The impact of racism on the health of Aboriginal Australians’ (2007) 31 *Australian and New Zealand Journal of Public Health* 322.

46 ANTaR (Australians for Native Title and Reconciliation), *Racism in Australia facts*, <http://www.antar.org.au/node/221> (viewed 26 November 2010).

47 *Racial Discrimination Act 1975* (Cth), s 9.

48 Australian Human Rights Commission, *Annual Report 2008–2009* (2009), p 49. At [http://www.humanrights.gov.au/about/publications/annual\\_reports/2008\\_2009/index.html](http://www.humanrights.gov.au/about/publications/annual_reports/2008_2009/index.html) (viewed 11 August 2010).

49 Australian Human Rights Commission, *Racial Discrimination Act 1975, For complaints conciliated and finalised in the period of Jul – Dec 2009*, [http://www.humanrights.gov.au/complaints\\_information/register/rda/rda\\_jul\\_dec09.html](http://www.humanrights.gov.au/complaints_information/register/rda/rda_jul_dec09.html) (viewed 11 August 2010).



Racial discrimination is covered in many areas of public life, including:

- employment – seeking employment, training, promotion, equal pay, employment conditions or dismissal
- education – at school, TAFE, university or a private training provider
- provision of goods, services or facilities – such as buying something, applying for a loan, seeking assistance from a service provider or going to shops or entertainment venues
- land, accommodation and housing – renting or buying a house or flat
- access to places and facilities for use by the public – such as parks, libraries, government offices, hotels, places of worship or entertainment centres.

During the 2008–09 reporting year, the Australian Human Rights Commission reported that a total of 42% of complaints under the RDA were made by people who identified as Aboriginal and/or Torres Strait Islander.<sup>50</sup> This figure dropped marginally to 39% during the 2009–10 reporting year.<sup>51</sup>

### **Systemic racism**

Some forms of racism are less identifiable. For example, institutionalised or systemic racism is an indirect and largely invisible process. It is the application of beliefs, values, presumptions, structures and processes by the institutions of society (be they economic, political, social or cultural) that indirectly treats the values of a particular racial group as inferior. This type of racism is not addressed by the RDA.

It can involve a failure to acknowledge historical discrimination against a particular group that has resulted in that group in the present day occupying an inferior or unequal position in society. The operation of the criminal justice system is an example that leads to structural inequality for Aboriginal and Torres Strait Islander peoples.<sup>52</sup>

In order to rebuild and strengthen our relationships as Australians, we must work together as a nation to eradicate racism.

While it is not my statutory responsibility to monitor the implementation of the RDA (this responsibility resides with the Race Discrimination Commissioner),<sup>53</sup> I have a particular interest in addressing racial discrimination as it affects Aboriginal and Torres Strait Islander peoples.

As well as confronting individual racism, I will pay particular attention to the structures of society that negatively impact on Aboriginal and Torres Strait Islander peoples. Structural racism is a real impediment to better relationships between Aboriginal and Torres Strait Islander peoples and the broader Australian population.

I will work with the Australian Government and state and territory governments to assist in identifying current legislative frameworks, policies and programs that are discriminatory. I will also provide practical advice on how to reform discriminatory practices and prevent discrimination in the future.

For example, increasing the knowledge of Australians about our nation's history, both before and after colonisation, would go some way to remedying racist attitudes

50 Australian Human Rights Commission, *Annual Report 2008–2009* (2009), p 68. At [http://www.humanrights.gov.au/about/publications/annual\\_reports/2008\\_2009/index.html](http://www.humanrights.gov.au/about/publications/annual_reports/2008_2009/index.html) (viewed 11 August 2010).

51 Australian Human Rights Commission, *Annual Report 2009–2010* (2010), p 78. At [http://www.humanrights.gov.au/about/publications/annual\\_reports/2009\\_2010/index.html](http://www.humanrights.gov.au/about/publications/annual_reports/2009_2010/index.html) (viewed 10 December 2010).

52 See H Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (2008); C Cunneen, *Conflict, politics and crime: Aboriginal communities and the police* (2001).

53 *Racial Discrimination Act 1975* (Cth), s 20.

towards Aboriginal and Torres Strait Islander peoples and improving relationships between us and the broader Australian community.

I look forward to working cooperatively with the Race Discrimination Commissioner to tackle racism, both individual and systemic, in Australia.

(ii) *Working towards a truly reconciled Australia*

Reconciliation involves building mutually respectful relationships between Indigenous and other Australians that allow us to work together to solve problems and generate success that is in everyone's best interests.

Achieving reconciliation involves raising awareness and knowledge of Indigenous history and culture, changing attitudes that are often based on myths and misunderstandings, and encouraging action where everyone plays their part in building a better relationship between us as fellow Australians.<sup>54</sup>

December 2010, marks the tenth anniversary of the Final Report of the Council of Aboriginal Reconciliation, *Reconciliation: Australia's Challenge*.<sup>55</sup> This report covered the formal national reconciliation process which was set in place by the Commonwealth Parliament when it voted unanimously to enact the *Council for Aboriginal Reconciliation Act 1991* (Cth). It also highlighted the efforts and achievements of many thousands of Australians who have worked to make reconciliation a reality in their communities, workplaces and organisations.

A key goal of the Council for Aboriginal Reconciliation's Strategic Plan (1998–2000) was to:

Achieve recognition and respect for the unique position of Aboriginal and Torres Strait Islander peoples as the indigenous peoples of Australia through a national document of reconciliation and by acknowledgment within the Constitution of this country.<sup>56</sup>

In Chapter 2 of this Report I discuss constitutional reform in detail and will not repeat that here. However, I do want to reaffirm my belief that constitutional reform will form a central part of the reconciliation journey. The prospect of a referendum recognising Aboriginal and Torres Strait Islander people and our rights in the Australian Constitution will provide us all with a great opportunity to reframe and reset our relationship as a nation.

With key actions that acknowledge the nation's history, such as the National Apology and the bipartisan commitment to Close the Gap, the journey to address the unfinished business of reconciliation has already begun.

Reconciliation at its core must be about recognising and embracing difference with mutual respect. We must be cautious that it is not based on the premise of further assimilation or integration. As Linda Burney notes, it must also be about:

...recognition, rights and reform. It is recognition of Aboriginal and Torres Strait Islander peoples as the original peoples of this land, and it is recognising the Aboriginal history of this land, both the long Aboriginal history before the invasion, and the shared history since. Reconciliation is recognising the rights that flow from being the First Peoples, as well as our rights as Australian citizens in common with all other citizens. It is about reforming systems to address the disadvantages suffered by Indigenous peoples and,

---

54 Reconciliation Australia, *What is Reconciliation*, <http://www.reconciliation.org.au/home/reconciliation-resources/what-is-reconciliation-> (viewed 26 November 2010).

55 Council for Aboriginal Reconciliation, *Reconciliation, Australia's Challenge: Final Report of the Council of Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (2000). At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/> (viewed 26 November 2010).

56 Council for Aboriginal Reconciliation, *Reconciliation, Australia's Challenge: Final Report of the Council of Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (2000), ch 7 and Appendix 1. At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/> (viewed 26 November 2010).

as I have said, it is about changing the frame of reference of all Australians to include Aboriginal Australia.<sup>57</sup>

By formally settling and affirming the place of Aboriginal and Torres Strait Islander peoples in the nation, we all as Australians grow in stature.

During the next three years, I commit myself to working closely with our political leaders and, more importantly, the people of Australia to achieve a successful referendum in 2013. This will be a real step towards achieving a reconciled nation.

**As Social Justice Commissioner, I will:**

- **work with the Race Discrimination Commissioner to address racism in Australia**
- **advocate for reforms that address systemic racism**
- **work towards a successful referendum that recognises the unique place and the rights of Aboriginal and Torres Strait Islander people in the Australian Constitution**
- **work towards achieving a reconciled nation.**

**(b) Promoting better relationships between Aboriginal and Torres Strait Islander peoples and governments**

Since beginning my term as Social Justice Commissioner, I have been told time and again that relationships between Aboriginal and Torres Strait Islander communities and governments at all levels are not good.

I believe that this relationship is currently characterised by a lack of trust, from both Aboriginal and Torres Strait Islander peoples and governments.

The NTER, with its suspension of the RDA, has damaged this relationship. The NTER, in particular, triggered our collective memories of past injustices faced by our peoples, communities and families.

There is an alternative, however and this was highlighted by Erica Daes:

The fundamental condition to realizing the right of self-determination in practice is trust between peoples. Trust is impossible without cooperation, dialogue and respect. Governments have nothing to fear from indigenous peoples; they can learn to respect and trust... to be able to live together peacefully, without exploitation or domination [... Indigenous peoples and governments] must continually renegotiate the terms of their relationship.<sup>58</sup>

Again, using the Declaration as the overarching framework has the potential to reset the relationship between Aboriginal and Torres Strait Islander peoples and governments.

The nation has seen some steps towards improving the relationship between Aboriginal and Torres Strait Islander peoples and the Australian Government. For instance, the Minister for Indigenous Affairs, in announcing the Australian Government's formal endorsement of the Declaration on 3 April 2009, stated:

57 L Burney, *Reconciliation and Citizenship; Not Just a Challenge – an Opportunity for all Australians* (Paper for the 50th Anniversary of Australian Citizenship Conference, University of Melbourne, Victoria, 1999). Cited by ANTaR, *Are we there yet? Ten years on from the Decade of Reconciliation: A Reconciliation Progress Report* (2010). At [http://www.antar.org.au/are\\_we\\_there\\_yet](http://www.antar.org.au/are_we_there_yet) (viewed 26 November 2010).

58 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) 50, p 57.

Today, Australia changes its position. Today, Australia gives our support to the Declaration. We do this in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australians and building trust... The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians. Australia's existing international obligations are mirrored in the Declaration.<sup>59</sup>

However, the actions of the Australian Government will speak louder than words in achieving the standards contained in the Declaration. One of the most significant shifts in this relationship has been the establishment of the National Congress of Australia's First Peoples (National Congress) in April 2010.

Borne out of a process designed and developed by my predecessor, Tom Calma, this is the result of years of work to recreate a national Indigenous representative body.

In making recommendations to establish this new body, the process was informed, at all stages, by Aboriginal and Torres Strait Islander people from across the country, and supported by a Steering Committee constituted by Aboriginal and Torres Strait Islander members.<sup>60</sup>

A key feature of all processes involved in establishing the National Congress was the agreed requirement for gender equity. In this regard the Congress gives effect to article 44 of the Declaration which states that '[a]ll the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals'.

The establishment of the National Congress means governments now have the opportunity to improve outcomes through meaningful engagement with a credible national representative voice for Aboriginal and Torres Strait Islander peoples.

The National Congress will be a crucial part of building and strengthening relationships between governments and Aboriginal and Torres Strait Islander peoples and I look forward to working closely with it as it develops over the next few years.<sup>61</sup>

The Australian Government's commitment to addressing Aboriginal and Torres Strait Islander disadvantage — particularly through its Closing the Gap agenda — is an important plank in resetting this relationship. This agenda has been influenced by the independent Close the Gap Campaign also initiated by my predecessor, Tom Calma, with whom I now sit as co-chair of the campaign.<sup>62</sup>

---

59 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un\\_declaration\\_03apr09.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm) (viewed 26 March 2010).

60 Steering Committee for the creation of a new National Representative Body, *Our future in our hands – Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples*, Australian Human Rights Commission (2009). At [http://www.humanrights.gov.au/social\\_justice/repbody/report2009/index.html](http://www.humanrights.gov.au/social_justice/repbody/report2009/index.html) (viewed 10 December 2010).

61 See National Congress of Australia's First Peoples, *Welcome National Congress of Australia's First Peoples*, <http://nationalcongress.com.au/welcome/> (viewed 10 December 2010).

62 "Close the Gap" was adopted as the name for the Campaign for Aboriginal and Torres Strait Islander Health Equality in 2006. It signals a human rights-based approach to achieving health equality within a generation.

In its August 2007 election platform the Australian Labor Party signalled its support for the approach of the Close the Gap Campaign. As a result 'closing the gap' entered the policy lexicon. It has been used to brand Aboriginal and Torres Strait Islander policy initiatives from the *National Partnership Agreement to Closing the Gap on Indigenous Health Outcomes* to aspects of the Northern Territory Emergency Response.

Please note, however, that 'closing the gap'-branded Australian Government and COAG initiatives do not necessarily reflect the human rights-based approach of the Close the Gap Campaign, nor does the use of the term 'closing the gap' in relation to these initiatives necessarily reflect an endorsement of them by the Close the Gap Campaign Steering Committee. See Close the Gap Campaign Steering Committee, *Close the Gap – Making It Happen Workshop Report*, Close the Gap Campaign (2010). This report will be available at [http://www.humanrights.gov.au/social\\_justice/health/index.html](http://www.humanrights.gov.au/social_justice/health/index.html).

Through COAG processes all Australian governments have come together to support specific and ambitious targets for Closing the Gap.<sup>63</sup> I welcome these targets, and commit to working with the Close the Gap Campaign Steering Committee to advance the development of a national plan to implement the Closing the Gap targets.

However, plans and targets aside, Aboriginal and Torres Strait Islander peoples and governments need respectful and trusting relationships as a solid foundation to move forward.

This is something that has been highlighted in numerous reports including *The Little Children are Sacred Report*,<sup>64</sup> the Review of the NTER<sup>65</sup> and the Report of the Special Rapporteur.<sup>66</sup>

There are two particular issues that contribute to the current status of the relationship between the Australian Government and Aboriginal and Torres Strait Islander people. They are the need to improve:

- engagement with Aboriginal and Torres Strait Islander communities
- the coordination of services to Aboriginal and Torres Strait Islander communities.

I will address each in turn.

(i) *Engagement with Aboriginal and Torres Strait Islander communities*

A core element of effective engagement is accepting that neither our experiences nor our needs are the same. We, as Aboriginal and Torres Strait Islander peoples, have our own unique needs and aspirations as distinct from the broader Australian population. And each Aboriginal and Torres Strait Islander community, has its own unique needs and aspirations. Consequently a one-size-fits-all approach will not be appropriate.

The Declaration is clear on this:

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.<sup>67</sup>

This is a right that all peoples have. It imposes obligations on nation-states and their governments to design and implement systems, policies, programs and legislation that not only cope with, but celebrate and nurture difference and diversity.

There is a need to move the current Indigenous policy space from a position of what *they* (governments) do to Aboriginal and Torres Strait Islander peoples to improve

---

63 See Council of Australian Governments, *National Indigenous Reform Agreement* (2008). At [http://www.coag.gov.au/intergov\\_agreements/federal\\_financial\\_relations/docs/IGA\\_FFR\\_ScheduleF\\_National\\_Indigenous\\_Reform\\_Agreement.rtf](http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/IGA_FFR_ScheduleF_National_Indigenous_Reform_Agreement.rtf) (viewed 10 December 2010).

64 Northern Territory Board of Inquiry into the Protection of Aboriginal Children From Sexual Abuse, *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*, Northern Territory Government (2007). At <http://www.inquirysaac.nt.gov.au/> (viewed 10 December 2010).

65 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

66 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010). At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

67 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 2. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 19 October 2010).

*our* lives – to what governments (and the broader Australian population) can do *with us, to support us* in achieving our goals and aspirations.

Policies designed and developed for Aboriginal and Torres Strait Islander peoples are predominantly lacking in a substantiated evidence base or input from those likely to be affected. Often input from Aboriginal and Torres Strait Islander peoples (when sought through public consultation processes), is not included in the output – the policy, program or legislation.<sup>68</sup>

Too often consultation occurs in an ad hoc manner, or worse it does not occur at all in the communities most affected by the issues being addressed. Nor is it usual practice for the governments to include Aboriginal and Torres Strait Islander peoples in pre and post-consultation processes where policies or draft legislation is being developed or finalised.

In most instances, Aboriginal and Torres Strait Islander communities have their own ideas about what might be done to solve the issues and opportunities confronting them. Often these ideas are not accommodated by governments and their policy and financial guidelines.

A critical step necessary to achieve substantial improvement in the lives of Aboriginal and Torres Strait Islander peoples is for governments, at all levels, to recognise, include and treat us as substantive players and major stakeholders in the development, design, implementation, monitoring and evaluation of all policy and legislation that impacts us.

Therefore, it is essential that governments develop an effective framework for engagement with Aboriginal and Torres Strait Islander peoples in order to generate positive relationships. A framework for engagement needs to be a mandated process across all government departments developing and implementing policies and programs that affect Aboriginal and Torres Strait Islander peoples. Crucially, the framework must be based on the key principles and objectives of the Declaration. Such a framework will be human rights in action, creating a space for free, prior and informed consent, self determination and respect for culture.

Such a framework of engagement should also reorient models of policy development and service delivery to ensure there is effective engagement at all stages of the process. This begins with designing and planning the engagement and should continue right through to monitoring and evaluation.

We must also address the ongoing failure to invest in building the capacity of Aboriginal and Torres Strait Islander communities to participate in decisions that affect them. The capacity of Aboriginal and Torres Strait Islander communities to engage in consultative processes has often been hindered by:

- inadequate resources to effectively participate in decision-making processes as equals and at all stages of policy processes
- burdensome processes and unreasonable timeframes for responding to discussion papers and draft legislation that directly relate to the rights of Aboriginal peoples and Torres Strait Islanders.

In order to address these deficiencies governments and their agencies need to develop sensible, cooperative, and culturally appropriate engagement mechanisms with Aboriginal and Torres Strait Islander communities. There is no place and no time for the sort of bureaucratic territorialism that, sadly, still marks much inter-

---

68 See further, M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2011), ch 3.

departmental and community engagement. The result is the consistent failure of policy and a lack of progress in overcoming disadvantage.

Governments have a responsibility to ensure that society's structures, laws and processes facilitate full and open engagement with Aboriginal and Torres Strait Islander citizens. It is simply unacceptable that structures, laws and processes continue to result in Aboriginal and Torres Strait Islander people being treated less equally than other Australians.

During my term I hope to work towards the establishment of a framework for engagement that will enable genuine relationships to exist between governments, non-Indigenous and Aboriginal and Torres Strait Islander peoples. I will advocate for a framework to cover Aboriginal and Torres Strait Islander peoples at the national, regional and local levels for the development, implementation, monitoring and evaluation of policy making and legislation that affects us.

*(ii) Coordination of services to Aboriginal and Torres Strait Islander communities*

The coordination of services to Aboriginal and Torres Strait Islander communities requires a commitment and cohesion from governments at all levels. As highlighted above, active participation by the people who are directly affected is necessary to ensure that policies are appropriately targeted to meet the needs of the community. The effective coordination of services to Aboriginal and Torres Strait Islander communities will require a strong partnership with the people who live and work in those communities.

When consultation does take place in Aboriginal and Torres Strait Islander communities they are also often poorly coordinated. For many Aboriginal and Torres Strait Islander communities, their days and weeks involve answering the revolving door of government bureaucrats from various federal, state and local governments who come to talk about a whole range of issues. In one remote Aboriginal community of approximately 2187 people<sup>69</sup> in Queensland there are 13 commercial flights per day.<sup>70</sup> More needs to be done to coordinate the delivery of services into communities and to promote community capacity and development.

Some communities have already managed to negotiate strategies to coordinate service delivery in their communities. In Chapter 3 of this Report I examine the journey of the Fitzroy Valley from communities in crisis to communities taking control. These communities have been working with governments to develop a regional response – the Fitzroy Futures Forum – to address issues of engagement and coordination. Fitzroy Futures Forum has been designed to address the specific priorities identified by the relevant communities. The responses to those priorities are being coordinated by the communities with the support of the relevant government departments.

**As Social Justice Commissioner, I will:**

- **develop a cooperative relationship with the National Congress of Australia's First Peoples**

69 As at 30 June 2009: Department of Aboriginal and Torres Strait Islander Policy, *Palm Island, Community Overview, Fact Sheet*, <http://www.atsip.qld.gov.au/government/programs-initiatives/partnerships/quarterly-reports/documents/jan-mar-2010/palmisland-quarterly-report-jan-mar-2010.rtf> (viewed 10 December 2010).

70 West Wing Aviation, *Palm Island Flights*, <http://www.westwing.com.au/palm-island.html> (viewed 10 December 2010).

- **work with the Close the Gap Campaign Steering Committee to lobby governments to develop a national implementation plan to close the gap on Indigenous disadvantage**
- **recommend that the Australian Government work with Aboriginal and Torres Strait Islander peoples to develop a consultation and engagement framework that is consistent with the minimum standards affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples*. Further, that the Australian Government commit to using this framework to guide the development of consultation processes on a case-by-case basis, in partnership with the Aboriginal and Torres Strait Islander peoples that may be affected by a proposed legislative or policy measure**
- **encourage governments and bureaucracies to reform their ways of working with Aboriginal and Torres Strait Islander communities to ensure that the delivery of services are coordinated.**

**(c) Promoting better relationships within Aboriginal and Torres Strait Islander communities**

Indigenous peoples should endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, ... and should make all efforts to address any issues of social dysfunction within their communities, including with respect to women and children.<sup>71</sup>

Aboriginal and Torres Strait Islander peoples continue to fight to regain and secure our rights to our country, our culture and our identities. However, as a consequence of the policies that have systematically denied us these rights, there is much healing that needs to happen within our families, language groups and communities.

My predecessor, Tom Calma said in his final speech as Social Justice Commissioner:

As Aboriginal and Torres Strait Islander peoples, the first peoples of this land, who have been blessed with a legacy of determination, resilience and survival, we have to come together, as those before us did when they fought for our citizenship rights, our land rights, our human rights. And as we all know – not everyone agreed with each other, different groups had different priorities and different ways of doing business, as we do today. But when it mattered they came together and fought together for the common elements of their arguments – our basic human rights.

However, we all continue to fight for our basic human rights, and unless we stand together on these fundamental basics that are exactly the same for each and every one of us – a quality of life and respect for our human rights – we will never overcome the challenges we face no matter what they are.<sup>72</sup>

71 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 107. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

72 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Annual Kevin Cook Lecture 2010: – Looking Back, Looking Forward* (Speech delivered at Yabun – Survival Day 2010, Sydney, 26 January 2010). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2010/20100126\\_kevin\\_cook\\_yabun.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100126_kevin_cook_yabun.html) (viewed 10 December 2010).



A significant consequence of our history is the legacy left by forced removal and assimilation policies that resulted in widespread dispersal, dispossession, and lack of identity for many.

It is a well argued phenomenon around the world that oppressed people will eventually internalise this oppression and turn on each other. This is known as lateral violence.

**Text Box 1.6: Lateral violence**

Lateral violence is the name given to the behaviour of bullying, harassing and intimidating among ourselves. This includes gossip, shaming and blaming others, backstabbing and attempts to socially isolate others.

It is directed *sideways* ('lateral') meaning the aggressors are your peers, often people in powerless positions. Other terms include 'work place bullying' and 'horizontal violence'.

The notion of 'lateral violence' implies that this behaviour is often the result of disadvantage, discrimination and oppression and that it arises from living within a society that is not designed for our way of doing things.<sup>73</sup>

Unfortunately, lateral violence is damaging many Aboriginal and Torres Strait Islander communities. For example, recent research conducted by the Office of the Registrar of Indigenous Corporations found that internal disputes constitute the third most prevalent 'class' of Indigenous corporate failure.<sup>74</sup>

In conversations I have had across the country, Aboriginal and Torres Strait Islander people recognise this is a real issue. They also recognise that it is one we, as Aboriginal and Torres Strait Islander peoples, need to address ourselves.

For example, the Family Wellbeing Empowerment Program in Cairns and Yarrabah, is designed specifically to overcome community conflict through building support within families and communities.<sup>75</sup> This program shows us that when given the right opportunities, people are prepared to confront and defeat behaviours and challenges that stifle and hurt our communities.

The concept of lateral violence is relatively new to Australia and will be an area of developing work during my term. However, as Commissioner I am committed to working with our communities to address lateral violence. Community empowerment is needed to address this form of violence.

I will advocate for government approaches to policy and service delivery that are predicated on the assumption that Aboriginal and Torres Strait Islander people have strengths and resources for our own empowerment.

I will be advocating for a strengths-based approach to policy development and implementation as it affects Aboriginal and Torres Strait Islander people and that recognises and supports our cultures and identities.

73 R Frankland, Aboriginal singer/songwriter, author and film maker, cited by Creative Spirits, *Bullying and Lateral Violence*, <http://www.creativespirits.info/aboriginalculture/people/bullying-and-lateral-violence.html> (viewed 26 November 2010).

74 Office of the Registrar of Indigenous Corporations, *Analysing key characteristics in Indigenous corporate failure: Research Paper* (2010), p 46. At [http://www.oric.gov.au/html/publications/other/Analysing-key-characteristics-in-Indigenous-corporate%20failure\\_v-2-2.pdf](http://www.oric.gov.au/html/publications/other/Analysing-key-characteristics-in-Indigenous-corporate%20failure_v-2-2.pdf) (viewed 1 November 2010).

75 See A McEwan and K Tsey, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Discussion Paper No. 7, Cooperative Research Centre for Aboriginal Health (2009). At <http://www.crcah.org.au/research/craah---role-of-spirituality-in-sewb-fwb-at-yarrabah.html> (viewed 10 December 2010).

A strengths-based approach to working with Aboriginal and Torres Strait Islander people is a human rights approach. This approach is about finding ways in which individuals, family units and communities can build on their capabilities:

The [strengths-based] approach focuses on what is working well, and uses informed strategies to support the growth of organisations and individuals... Strengths based methodologies do not ignore problems; instead they shift the frame of reference to define the issues.<sup>76</sup>

Again, I will again draw on the Declaration to guide my work in this regard. The rights outlined in the Declaration provide useful guidance for all aspects of our lives, including our physical, mental, social, and cultural well-being.

Not only does the Declaration provide guidance to governments about their responsibilities to Indigenous peoples, we can also use the Declaration to set our own standards for engagement and participation with each other and within our own communities. Standards such as those included in the Declaration should be embedded in all levels of our own internal governance – from our own families and community organisations, to our regional bodies, state and national peak bodies as well as the National Congress.

We each have a choice and a responsibility to participate in these structures to ensure an improved quality of life for our immediate future, and a solid foundation for our next generations.

Through our active participation in our communities, and through Aboriginal and Torres Strait Islander peoples asserting standards that are appropriate to achieve true self-determination, I believe we can address the multiple and trans-generational layers of disadvantage and trauma confronting us in our communities. As noted above, Chapter 3 of this Report examines how the communities in the Fitzroy Valley region of Western Australia have gone from communities in crisis to communities in control. This Chapter shows that when Aboriginal and Torres Strait Islander communities are enabled to own their own challenges, appropriately supported by governments, they can address their most confronting and intractable issues.

### (i) *The role of governments*

Governments cannot and should not intervene to fix our internal relationships.

Issues such as family and lateral violence, suicide and high incarceration rates, bullying in communities and community organisations, are all issues that undermine the development of healthy internal relationships between Aboriginal and Torres Strait Islander peoples individually and collectively.

Governments can provide the support structures and funding for programs that are necessary but only Aboriginal and Torres Strait Islander peoples ourselves can address these issues.

The role for governments is to work with us, as enablers and facilitators. To do this governments should act to remove existing structural and systemic impediments to healthy relationships within our communities.

---

76 TAFE NSW, *Promoting Emerging Practice*, [www.icvet.tafensw.edu.au/resources/strengths\\_based.htm](http://www.icvet.tafensw.edu.au/resources/strengths_based.htm) (viewed 20 July 2010) as cited by M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Aboriginal and Torres Strait Islander peoples access to services* (Speech delivered at QCOSS Regional Conference: Building a Better Future – themed around improving service delivery for regional and remote communities, Cairns, 12 August 2010). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2010/20100812\\_access\\_services.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100812_access_services.html) (viewed 10 December 2010).

**As Social Justice Commissioner, I will:**

- **work towards a zero tolerance policy with regard to any type of abuse within our communities – bullying, harassment, intimidation and violence**
- **advocate a strengths-based approach to policy development and implementation as it affects Aboriginal and Torres Strait Islander people and that recognises and supports our cultures and identities, and build on the strengths of Aboriginal and Torres Strait Islander people.**

## 1.4 Conclusion

As the Social Justice Commissioner, I approach with optimistic anticipation the challenge of working with governments, non-Indigenous Australians, and most importantly Aboriginal and Torres Strait Islander peoples and organisations to build stronger and deeper relationships capable of addressing disadvantage.

During my term, I also look forward to working with the Australian Government and the states and territories to implement the Declaration's provisions in meaningful ways and to develop an understanding of the Declaration among government officials, Aboriginal and Torres Strait Islander communities and the broader Australian community.

I believe the full and proper implementation of the Declaration can unleash Australia's potential to engage with its Indigenous peoples and firmly establish Australia's leadership role in the international human rights system:

Imagine the indigenous world as it was, for a moment [before colonisation]. Then think of the conditions that indigenous peoples currently face: encroachment, colonization, subjugation, exploitation, domination, leaving many of us in disarray. Now read the Declaration through from beginning to the end and dream of a world that 'might someday be'.<sup>77</sup>

An agenda of hope can only be sustained when Aboriginal and Torres Strait Islander people are able to achieve our potential – able to realise our personal and collective capabilities. And only then we will be in a position to move towards a truly reconciled Australia.

Glenn Pearson, a Noongah man from Perth who, when asked what type of future that he would like to see for us as a nation, put it like this:

I want for my children – as I do for your children – that they grow really, really old together – having led fantastic lives that have allowed them to make a lifetime contribution to the health and wellbeing of the broader community and their families – that when they were tested by life's challenges they pulled together to face them as a people – that they drew upon the best of what they had to find positive solutions to the things that have tested even our own generation. That they purposively took on those things that they felt did not reflect what they wanted in a fair, honest, respectful and harmonious society – that they learnt to hold and celebrate Aboriginal culture and history as an essential

---

77 D Sambo Dorough, 'The Significance of the Declaration on the Rights of Indigenous Peoples and its Future Implementation' in C Charters and R Stavenhagen, *Making the Declaration Work* (2009) 264, p 264. At <http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/Making%20the%20Declaration%20Work.pdf> (viewed 10 December 2010). In this quote Dr. Sambo Dorough cites the work of M Brown, *The Dream Book: First Come First Dream* (1950).

## Social Justice Report 2010

part of the Australian story because they saw themselves as part of it – connected to it, proud of it and centred by it. A truly reconciled community.<sup>78</sup>

This is a vision I share and will work towards over the next five years.

### Recommendations

- 1.1 That the Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples to develop a national strategy to ensure the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- 1.2 That the Australian Government introduce legislation into Parliament to require the Attorney-General to provide a formal response to the annual *Native Title Report* and the *Social Justice Report* within a set timeframe.

---

<sup>78</sup> G Pearson, *Presentation to the Strong Foundations, Sustainable Futures* (Speech delivered at the Start Stronger, Live Longer National Aboriginal Health Worker Symposium, University of Western Australia, Perth, 8–9 June 2010).

# Chapter 2:

## Constitutional reform: Creating a nation for all of us

.....

### 2.1 Introduction

A century ago, the Australian people engaged in a debate about creating a nation. They held meetings...They wrote articles and letters in newspapers. Many views were canvassed and voices were heard. The separate colonies, having divided up the land between them, discussed ways of sharing powers in order to achieve a vision of a united Australia. The result was the Australian Constitution, establishing the Commonwealth of Australia in 1901.

A century ago our Constitution was drafted in the spirit of terra nullius. Land was divided, power was shared, structures were established, on the illusion of vacant land. When Aboriginal people showed up – which they inevitably did – they had to be subjugated, incarcerated or eradicated: to keep the myth of terra nullius alive.

A century after the original constitutional debate we have an opportunity to remake our Constitution to recognise and accommodate the prior ownership of the continent by Aboriginal and Torres Strait Islander people.<sup>1</sup>

One hundred and ten years ago years ago, Queen Victoria gave Royal Assent to the Australian Constitution, the founding document of our nation and pre-eminent source of law in the country.

Aboriginal and Torres Strait Islander peoples were noticeably absent from its drafting.

We were excluded from the discussions concerning the creation of a new nation to be situated on our ancestral lands and territories.

We were expressly discriminated against in the text of the Constitution, with provisions that prevented us from being counted as among the numbers of the new nation, and which prevented the new Australian Government from making laws that were specifically directed towards us.<sup>2</sup>

As a consequence, the Constitution did not – and still does not – make adequate provision for us. It has completely failed to protect our inherent rights as the first peoples of this country.

Former Chief Justice of the High Court of Australia, Sir Anthony Mason, has referred to this as a ‘glaring omission’.<sup>3</sup>

---

1 P Dodson, *Welcoming speech* (Speech delivered at the Position of Indigenous People in National Constitutions Conference, Canberra, 4 June 1993) quoted in B Attwood and A Markus, *The 1967 Referendum: Race, Power and the Australian Constitution* (2nd ed, 2007), pp 146-147.

2 The 1967 Referendum removed these exclusions: see T Blackshield and G Williams, *Australian Constitutional Law and Theory: Commentary and Materials* (5th ed, 2010), p 154.

3 Sir A Mason, ‘The Australian Constitution in retrospect and prospect’ in G Lindell (ed), *The Sir Anthony Mason Papers* (2007) 144, p 148.

## Social Justice Report 2010

In the face of this history of exclusion, Aboriginal and Torres Strait Islander peoples have consistently and vehemently fought to have our rights recognised and acknowledged by the Australian Government and the Australian people. In 1938, two great Aboriginal warriors stated that:

You are the New Australians, but we are Old Australians. We have in our arteries the blood of the Original Australians; we have lived in this land for many thousands of years. You came here only recently, and you took our land away from us by force.<sup>4</sup>

There is a long history of Indigenous and non-Indigenous people calling for this recognition including:

- 1938 – Aborigines Conference
- 1967 – Referendum and preceding campaigns
- 1988 – Barunga Statement
- 1988 – Constitution Commission’s Report
- 1995 – Social Justice Package submissions<sup>5</sup>
- 1999 – Referendum on the preamble of the Constitution
- 2000 – Council for Aboriginal Reconciliation Report
- 2008 – 2020 Summit
- 2008 – Social Justice Report
- 2009 – Australian Human Rights Commission Submission to the National Human Rights Consultation.

These examples illustrate years of advocacy for constitutional recognition.

Since the days of the Bark Petition, Aboriginal people have been aware that the protection offered by legislation – ranging from the Aboriginal protection ordinances to the Land Rights Act – is only as secure as the government of the day...We have long believed that the protection of our rights deserves a higher level of recognition and protection.<sup>6</sup>

It is upon this historical foundation that Australians are increasingly accepting the need to address this non-recognition and exclusion through constitutional reform.

The determination of Aboriginal and Torres Strait Islander leaders to fight to secure our future in this nation has resulted in some improvements in the recognition of our land, cultural and social rights. This has been reflected in advancements such as:

- the fight of Eddie Mabo and others for the native title rights of the Mer people, that led to the High Court decision of *Mabo (No 2)*<sup>7</sup> and the legislative response, the *Native Title Act 1993* (Cth)

---

4 J Patten and W Ferguson quoted in S Bennett, *Aborigines and Political Power* (1989), p 5.

5 Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform: Report to Government on Native Title Social Justice Measures* (1995); Council for Aboriginal Reconciliation, *Going Forward – Social Justice For The First Australians* (1995). At <http://www.austlii.edu.au/au/other/IndigLRes/car/1995/2/> (viewed 14 December 2010); M Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Social Justice: A Submission to the Parliament of the Commonwealth of Australia on the Social Justice Package* (1995), volume 1 of this submission *Strategies and Recommendations* is largely reproduced in M Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1995*, Human Rights and Equal Opportunity Commission (1995), ch 4. At [http://www.humanrights.gov.au/word/social\\_justice/sj\\_report\\_95.doc](http://www.humanrights.gov.au/word/social_justice/sj_report_95.doc) (viewed 14 December 2010).

6 J Daley on behalf of G Yunupingu, *Northern Territory Statehood and Constitutional protections: issues and implications for future Aboriginal governance* (Speech delivered at the Indigenous Governance Conference, Jabiru, 4 – 7 November 2003), p 1.

7 *Mabo v Queensland (No. 2)* (1992) 175 CLR 1.

- the work of people such as Lowitja O’Donohue, Les Malezer, Mick Dodson, Megan Davis and Tom Calma in the development of the *United Nations Declaration on the Rights of Indigenous Peoples (Declaration)*<sup>8</sup> and its subsequent endorsement by the Australian Government.

I believe the nation is beginning to come to terms with its true, complete history. This requires the nation, to come to terms with a history of exclusion and the violations of the rights of Aboriginal and Torres Strait Islander peoples.

A major step in this journey was the 1967 referendum that resulted in a critical change that allowed Aboriginal and Torres Strait Islander people to be counted in the census. It also gave the Australian Government the power to make laws for Aboriginal and Torres Strait Islander peoples.

Ten years ago, the Council for Aboriginal Reconciliation identified constitutional reform as unfinished business of the reconciliation agenda, calling for the Commonwealth Parliament to prepare legislation for a referendum.<sup>9</sup>

The most recent highpoint came in 2008, when the Prime Minister, delivered the National Apology to Australia’s Indigenous Peoples (National Apology) for the forcible removal of Aboriginal and Torres Strait Islander peoples from their lands and their families.<sup>10</sup>

There have been some further recent positive developments with Aboriginal and Torres Strait Islander peoples being formally recognised in several state constitutions:

- The Queensland Constitutional Convention, held in June 1999, recommended that the Constitutions of each state should recognise the custodianship of the land by Aboriginal and Torres Strait Islander peoples.<sup>11</sup> Queensland’s Constitution was formally changed in 2010.<sup>12</sup>
- In 2004, Victoria became the first state to recognise the Aboriginal people of Victoria in their Constitution in 2004.<sup>13</sup>
- In 2010, the New South Wales (NSW) Parliament passed legislation to recognise Aboriginal peoples in the NSW Constitution.<sup>14</sup>

This recognition provides a good basis on which to build the necessary consensus within the Australian community that Aboriginal and Torres Strait Islander peoples should be acknowledged in the nation’s foundational legal instrument.

---

8 GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007). At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

9 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 12 July 2010).

10 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, pp 167-173 (The Hon Kevin Rudd MP, Prime Minister). At <http://www.aph.gov.au/hansard/reps/dailys/dr130208.pdf> (viewed 10 November 2010).

11 G Griffith, *Constitutional Recognition of Aboriginal People*, e-brief 11/2010, NSW Parliamentary Service (2010), p 5. At [http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Constitutional+RecognitionofAboriginalPeople/\\$File/E+Brief+Constitutional+Recognition+of+Aboriginal+People.pdf](http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Constitutional+RecognitionofAboriginalPeople/$File/E+Brief+Constitutional+Recognition+of+Aboriginal+People.pdf) (viewed 13 September 2010).

12 *Constitution (Preamble) Amendment Act 2010* (Qld). This Act inserted a new preamble and s 3A into the *Constitution of Queensland 2001* (Qld).

13 *Constitution (Recognition of Aboriginal People) Act 2004* (Vic). This Act inserted a new s 1A into the *Constitution Act 1975* (Vic).

14 *Constitution Amendment (Recognition of Aboriginal People) Act 2010* (NSW). This Act inserted a new s 2 into the *Constitution Act 1902* (NSW).

At the federal level, bipartisan support for amending the Constitution in this regard has been maintained since 2007.<sup>15</sup> Bipartisan support was reaffirmed by both major parties as election commitments in the federal election held in August 2010.<sup>16</sup>

In this Chapter, I build on these current developments and commitments. I seek to answer three key questions that will go to the heart of a successful campaign:

- Why is there a need for constitutional reform to recognise Aboriginal and Torres Strait Islander peoples?
- What could reform look like?
- What are the next steps?

In section 2 of this Chapter I discuss the need for and significance of constitutional reform. I focus on the symbolic and practical effects on the lives of Aboriginal and Torres Strait Islander peoples, as well as the benefit this could bring to all Australians.

Section 3 outlines some of the possibilities for reform. It is my belief that the nation is ready to move beyond preambular recognition to address the provisions of our Constitution that permit and anticipate racial discrimination.

Section 4 analyses historical lessons and contemporary practicalities to chart some of the essential next steps to be taken, toward achieving a successful referendum.

We have reached a critical juncture. Australians have a rare opportunity to stand together as one people, united in recognition of the contribution of Aboriginal and Torres Strait Islander peoples to this land and this nation, in the past, the present and into the future. What is at stake is an inclusive national identity and a path towards a truly reconciled nation.

History shows that constitutional reform is not easy. As with the 1967 referendum, it will require the open hearts and minds of the majority of Australians in order to succeed.

I believe now is the right time to take up this challenge: for Australia to come together as a nation, as in 1967, to build the consensus and momentum to make this reform a reality.

---

15 In his 2007 pre-election commitments former Prime Minister John Howard committed to a referendum to recognise Aboriginal and Torres Strait Islander peoples: The Hon J Howard MP, Prime Minister, *The Right Time: Constitutional Recognition for Indigenous Australians* (Speech delivered at the Sydney Institute, Sydney, 11 October 2007). At [www.abc.net.au/news/opinion/speeches/files/20071011\\_howard.pdf](http://www.abc.net.au/news/opinion/speeches/files/20071011_howard.pdf) (viewed 13 September 2010). His successor Kevin Rudd referred to the need to work on constitutional recognition in the National Apology: Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 172 (The Hon Kevin Rudd MP, Prime Minister). At <http://www.aph.gov.au/hansard/reps/dailys/dr130208.pdf> (viewed 10 November 2010). This position was further affirmed at the Community Cabinet meeting in Yirrkala, July 2008: L Murdoch, 'Place for Aborigines in the constitution', *Sydney Morning Herald*, 24 July 2008, At <http://www.smh.com.au/news/national/place-for-aborigines-in-the-constitution/2008/07/23/1216492541163.html> (viewed 13 September 2010).

16 The Australian Labor Party, *The Australian Greens & The Australian Labor Party Agreement* (2010), p 2. At [www.alp.org.au/getattachment/255f5397-f9da.../government-agreements/](http://www.alp.org.au/getattachment/255f5397-f9da.../government-agreements/) (viewed 25 October 2010). Coalition, *Coalition Election Policy 2010: The Coalition's plan for real action for Indigenous Australians* (2010), p 4. At <http://www.liberal.org.au/~media/Files/Policies%20and%20Media/Community/Indigenous%20Australians%20Policy.aspx> (viewed 13 September 2010).



## 2.2 Why does Australia as a nation need to recognise Aboriginal and Torres Strait Islander peoples in the Constitution?

The Constitution demarcates the powers of each of our three branches of governance – the Parliament, the Executive and the Courts.

The current Chief Justice of the High Court of Australia, Chief Justice Robert French has said, ‘the Constitution creates the space in which all other domestic laws operate in this country. It defines the extent of [Australia’s] legal universe’.<sup>17</sup>

As highlighted in Chapter 1 of this Report, I am convinced that building positive relationships based on trust and mutual respect between Aboriginal and Torres Strait Islander peoples and the broader Australian community is critical to overcoming Indigenous disadvantage. I believe that constitutional reform is necessary to facilitate the building of these positive relationships.

### (a) Achieving true equality for Aboriginal and Torres Strait Islander peoples

Achieving true equality does not mean that Aboriginal and Torres Strait Islander peoples should be assimilated or integrated into the nation’s governance and society. The Declaration in its second preambular paragraph affirms:

that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.<sup>18</sup>

Affirming the principles of equality, non-discrimination and the right to be different would celebrate and respect our diversity and our culture as an integral part of the life of the nation.

In July 2010, I voiced my support for constitutional reform to recognise Aboriginal and Torres Strait Islander peoples and our rights.<sup>19</sup> A number of questions were raised in response. Most of these questions went to the impact that constitutional change could have on the lives of Aboriginal and Torres Strait Islander peoples. I believe that there are a number of significant outcomes for us as a result of constitutional reform. I will specifically address:

- the symbolic value of constitutional reform that leads to practical outcomes
- the value of constitutional reform in contributing to greater protection of the rights of Aboriginal and Torres Strait Islander peoples.

I will explain each of these below.

---

17 The Hon Chief Justice R French, *Theories of Everything and Constitutional Interpretation* (Speech delivered at the Gilbert & Tobin Centre of Public Law, UNSW, 2010 Constitutional Law Conference Dinner, Sydney, 19 February 2010), p 4. At [http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/mdocs/644\\_RobertFrench.pdf](http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/mdocs/644_RobertFrench.pdf) (viewed 28 September 2010).

18 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 2. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

19 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘Indigenous inclusion is good for our Constitution’, *Sydney Morning Herald*, 9 July 2010, p 13. At <http://www.smh.com.au/opinion/society-and-culture/indigenous-inclusion-is-good-for-our-constitution-20100708-10275.html> (viewed 22 July 2010).

(i) *Symbolic value leading to practical effect*

Over the years, there has been plenty of debate about the value of symbolism versus practical action.<sup>20</sup> I do not believe that these are mutually exclusive, nor do I believe they should be framed as an 'either/or' option. Why can't we do both?

Symbols are an important part of building nations. They are reminders of a collective past and provide guidance towards an aspirational collective future. They are the things upon which practical actions should be built.

The Australian flag, the national anthem, and the green and gold colours of national sporting teams, are all symbols that connect Australians to the nation's identity and inspire feelings about that identity.

Recognition is particularly important for the psyche of Aboriginal and Torres Strait Islander peoples. Academic Waleed Aly recently commented on the positive impact of symbolic recognition of Indigenous peoples through the welcome and acknowledgement of country protocols:

... I'm frankly astounded to hear lots of non-Indigenous people talk about what is and is not tokenistic on an issue like this, when so much of what happened to the Indigenous population has deep symbolic resonance. It's not just that they were deprived materially. It's not just lack of education. It's not just lack of economic opportunity, although those things are extremely important. It is also the denial of the humanity that comes with that and unless you've experience that... I think its extraordinarily difficult to say just how profoundly important that [recognition] can be... I don't know, I'm a bit disturbed to hear so many people prepared just to dismiss it, when it's not their experience to have.<sup>21</sup>

A senior Aboriginal activist (name not provided for cultural reasons) spoke of the personal impact achieved by the 1967 referendum:

At the time I definitely thought that the [1967] Referendum achieved something – personally, it made me lose my inferiority complex... It made me prouder to proclaim my Aboriginality.<sup>22</sup>

Formal recognition of Aboriginal and Torres Strait Islander peoples within the Australian Constitution would surely strengthen this sentiment as expressed by this senior Aboriginal man.

The positive effects of symbolic recognition extend beyond Aboriginal and Torres Strait Islander peoples to all Australians. As noted by Professor Larissa Behrendt:

Symbolic recognition that could alter the way Australians see their history will also affect their views on the kind of society they would like to become. It would alter the symbols and sentiments Australians use to express their identity and ideals. It would change the context in which debates about Indigenous issues and rights take place. It would alter the way the relationship between Indigenous and non-Indigenous Australia is conceptualised. These shifts will begin to permeate them. In this way, the long term effects of symbolic recognition could be quite substantial.<sup>23</sup>

The power of symbols is that they can inspire action. This in turn can result in positive practical effects that lead to an improved quality of life for Aboriginal and Torres Strait Islander peoples.

---

20 See H McRae et al, *Indigenous Legal Issues: Commentary and Materials* (4th ed, 2009), pp 53-60.

21 W Aly, ABC Television, Q&A, 15 March 2010, <http://www.abc.net.au/tv/qanda/txt/s2840015.htm> (viewed 10 August 2010).

22 Quoted in B Attwood and A Markus, *The 1967 Referendum: Race, Power and the Australian Constitution* (2nd ed, 2007), p 159.

23 L Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (2003), pp 144-145.

The most obvious example of an event that has achieved significant symbolic value is the National Apology.<sup>24</sup> On that day, Indigenous and non-Indigenous Australians sat, held each other and cried together. The nation took a great leap forward towards reconciling with its past. Prior to the National Apology, many argued that an apology would be purely symbolic, and that focus should be confined to pursuing ‘practical reconciliation’.

### **Text Box 2.1: The National Apology**

The National Apology was a national recognition of the effects of government policies that dispossessed and dispersed Aboriginal and Torres Strait Islander peoples across the country. While there are people who were directly affected by these policies, all Aboriginal and Torres Strait Islander people have been and continue to be affected in some way.

#### **Symbolic value**

The National Apology empowered the Stolen Generations members by acknowledging their experience and life struggle as a result of government laws and policies. Beyond the Stolen Generations, it was a moment for all Aboriginal and Torres Strait Islander people to seize. Many felt for the first time that they belonged – that we were finally acknowledged as part of the nation.

In addition, it also had a positive impact for non-Indigenous Australians, particularly how it affected their relationship with Aboriginal and Torres Strait Islander peoples. The National Apology has enabled a wider understanding and appreciation of the historical wrongs that had occurred, and was a necessary and positive step forward to advance reconciliation.

#### **Practical effect**

In the political context, the National Apology has become a significant point of reference. It has been referred to in parliamentary debates<sup>25</sup> and reports.<sup>26</sup>

The National Apology has also subsequently informed government policies and programs. This has most visibly manifested in the establishment of the National Aboriginal and Torres Strait Islander Healing Foundation and reinvigorated discussion about options for reparations for the Stolen Generations.

24 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, pp 167-173 (The Hon Kevin Rudd MP, Prime Minister). At <http://www.aph.gov.au/hansard/rep/dailys/dr130208.pdf> (viewed 10 November 2010).

25 Commonwealth, *Parliamentary Debates*, House of Representatives, 8 February 2009, p 715 (The Hon Tony Abbott MP, Leader of the Opposition). At <http://www.aph.gov.au/hansard/rep/dailys/dr080210.pdf> (viewed 10 November 2010).

26 The Hon Kevin Rudd, Prime Minister, *Closing the Gap – Prime Minister’s Report* (2010), p 1. At [http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Pages/closing\\_the\\_gap\\_2010.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Pages/closing_the_gap_2010.aspx) (viewed 10 November 2010).

In the legal context, Justice Kirby considered the impact of the National Apology on legislative interpretation in the High Court's *Blue Mud Bay* decision. Justice Kirby acknowledged that the National Apology had bipartisan support and it

reflects an unusual and virtually unprecedented parliamentary initiative, it does not, as such, have normative legal operation... it is not legally irrelevant to the task presently in hand. It constitutes part of the factual matrix or background against which the legislation in issue in this appeal should now be considered and interpreted. It is an element of the social context in which such laws are to be understood and applied, where that is relevant. Honeyed words, empty of any practical consequences, reflect neither the language, the purpose, nor the spirit of the National Apology.<sup>27</sup>

Those who argue against symbolic actions miss the fundamental linkage between the symbolic and the practical. Actions that have real and lasting effect on a community are both symbolic and practical.

I strongly believe that reforms to the Constitution to recognise Aboriginal and Torres Strait Islander peoples and our rights will provide significant symbolic value as well as have a profound practical effect.

This will of course depend on the extent of the reform, a point discussed in greater detail later in this Chapter. How governments and the broader Australian community respond to those reforms will also be critical to realising their full potential.

In summary, symbolic recognition has the potential to:

- address a history of exclusion of Aboriginal and Torres Strait Islander peoples in the life of the nation
- improve the sense of self worth and social and emotional well-being of Aboriginal and Torres Strait Islander peoples both as individuals, communities and as part of the national identity<sup>28</sup>
- change the context in which debates about the challenges faced by Aboriginal and Torres Strait Islander communities take place
- improve the relationships between Indigenous and non-Indigenous Australians.

(ii) *Will there be greater protection for the rights of Aboriginal and Torres Strait Islander peoples?*

It is occasionally argued that constitutional reform to recognise Aboriginal and Torres Strait Islander peoples will result in more rights for one specific group of people within the nation.<sup>29</sup>

I believe this view is misconceived.

It fails to acknowledge the reality of our existing societies with their own polities and legal systems prior to colonisation. It fails to reflect the subsequent discrimination towards, and the denial of the rights of Aboriginal and Torres Strait Islander peoples.

---

27 *Territory v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24, 70 (Kirby J).

28 See The Royal Australian and New Zealand College of Psychiatrists, 'Constitution changes would improve Indigenous mental health' (Media Release, 12 October 2010). At <http://www.ranzcp.org/media/constitution-changes-would-improve-indigenous-mental-health.html> (viewed 24 November 2010).

29 See blog comments in response to M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Indigenous inclusion is good for our Constitution', *Sydney Morning Herald*, 9 July 2010. At <http://www.smh.com.au/opinion/society-and-culture/indigenous-inclusion-is-good-for-our-constitution-20100708-10275.html> (viewed 22 July 2010).

It also fails to recognise that the historic non-recognition of our peoples' rights has continuing negative impacts today.

There are parallels between the need for a Declaration recognising the rights of Indigenous peoples and the need for constitutional reform.

### **Text Box 2.2: Why we need an Indigenous Declaration**

#### **James Anaya, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people**

By particularizing the rights of indigenous peoples, the Declaration seeks to accomplish what should have been accomplished without it: the application of universal human rights principles in a way that appreciates not just the humanity of indigenous individuals but that also values the bonds of community they form...

It is precisely because the human rights of indigenous groups have been denied, with disregard for their character as peoples, that there is a need for the Declaration. In other words...the Declaration exists because indigenous peoples have been denied equality, self-determination, and related human rights. *It does not create for them new substantive rights that others do not enjoy. Rather, it recognizes for them rights that they should have enjoyed all along as part of the human family, contextualizes those rights in light of their particular characteristics and circumstances, and promotes measures to remedy the rights' historical and systemic violation...*

There should not have to be a Declaration on the Rights of Indigenous Peoples, because it should not be needed. But it is needed. The history of oppression against indigenous peoples cannot be erased, but the dark shadow that history has continued to cast can and should be lightened. The Declaration is needed for the difference it can and will make for the future...<sup>30</sup>

Reform to the Constitution will address this position of entrenched disadvantage and exclusion, rather than affording Aboriginal and Torres Strait Islander peoples' additional rights. Professor Pat Dodson, one of the leaders of reconciliation, has aptly stated that this is a matter of 'justice, not special benefit'.<sup>31</sup>

Recognition of Aboriginal and Torres Strait Islander peoples in the nation's foundational document will redress a history of exclusion, and have the concrete impact of recognising us as Australia's indigenous peoples within the nation's governance.

One of the fundamental rights that most Australians take for granted is the right to live free from discrimination. However, the Constitution currently offers no protection of this right. While recognition of Aboriginal and Torres Strait Islander peoples can be accommodated through inserting a new preamble into the Constitution, change to the body of the Constitution will be required to ensure protection against discrimination.

Aboriginal lawyer and academic Megan Davis observes that:

30 S J Anaya, 'Why there Should Not Have to Be a Declaration on the Rights of Indigenous People', in S J Anaya, *International Human Rights and Indigenous Peoples* (2009) 58, p 63 (emphasis added).

31 P Dodson, *Can Australia Afford Not to be Reconciled* (Speech delivered at the National Indigenous Policy and Dialogue Conference, UNSW, Sydney, 19 November 2010), p 3. At [http://ipdru.arts.unsw.edu.au/media/File/Dodson\\_keynote.rtf](http://ipdru.arts.unsw.edu.au/media/File/Dodson_keynote.rtf) (viewed 24 November 2010).

In Australia, Indigenous interests have been accommodated in the most temporary way, by statute. What the state gives, the state can take away, as has happened with the ATSIC, the *Racial Discrimination Act* and native title.<sup>32</sup>

Relying on the benevolence of parliament to protect the rights and interests of all Australians does not provide adequate protection against discrimination.<sup>33</sup>

Aboriginal and Torres Strait Islander peoples are particularly vulnerable to this lack of protection. The *Racial Discrimination Act 1975* (Cth) (RDA) has been compromised on three occasions: each time it has involved Aboriginal and Torres Strait Islander issues.

There is no clearer evidence of this discriminatory effect, than the Northern Territory Emergency Response (NTER) that affects 73 remote Indigenous communities in the Northern Territory.

The NTER in its original application was not subject to the RDA – the federal legislation designed to ensure equality of treatment of all people regardless of their race. The RDA as an Act of Parliament can be disregarded simply through the passage of further legislation. The Constitution as it currently stands did not prevent the suspension of the RDA. Therefore, it was ineffective in protecting our peoples from the most fundamental of all freedoms, the freedom from discrimination.<sup>34</sup>

In order to address this inadequacy and the historical denial of justice, substantive constitutional change is necessary to improve the protection of Aboriginal and Torres Strait Islander peoples' rights against discrimination.

### **(b) Achieving a unified nation within Australia**

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>35</sup>

Recognising Aboriginal and Torres Strait Islander peoples and our rights will positively benefit all Australians. It will:

- enrich the identity of the nation
- improve the effectiveness of the nation's democracy through increasing the protection of the rights of all Australians
- make significant headway towards a reconciled Australia.

#### *(i) Enriching the nation's identity*

In the National Apology the Prime Minister honoured and acknowledged Aboriginal and Torres Strait Islander peoples as the 'the oldest continuing cultures in human

---

32 M Davis, 'A woman's place...' (2009) 24 *Griffith Review* 156, p 157. At <http://www.griffithreview.com/edition-24-participation-society/222-essay/643.html> (viewed 13 September 2010).

33 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *40 years on: What does the 'Yes' vote mean for Indigenous Australians?* (Speech delivered at the Anglicare Tasmania Annual Social Justice Lecture, Hobart, 22 August, 2007). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2007/40\\_years\\_on20070822.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2007/40_years_on20070822.html) (viewed 10 November 2010).

34 The Australian Government has gone some way to lifting the suspension of the RDA with the passage of the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth). Race Discrimination Commissioner Innes and I welcomed this as a 'first step': See Australian Human Rights Commission, 'Passage of NTER Amendments a step in the right direction' (Media Release, 22 June 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/61\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/61_10.html) (viewed 10 November 2010).

35 P Dodson, *In Search of Change, Robed in Justice* (Speech delivered upon acceptance of the Sydney Peace Prize, Sydney, 5 November 2008).

history'.<sup>36</sup> This is not simply a matter of our identity as Aboriginal and Torres Strait Islander peoples; it also informs the nation's identity. Former Prime Minister Paul Keating articulated this in his famous Redfern Speech in 1992.

**Text Box 2.3: The Redfern Address: Prime Minister Paul Keating**

It is a test of our self-knowledge.

Of how well we know the land we live in. How well we know our history.

How well we recognise the fact that, complex as our contemporary identity is, it cannot be separate from Aboriginal Australia.

...

The message should be that there is nothing to fear or to lose in the recognition of historical truth, or the extension of social justice, or the deepening of Australian social democracy to include Indigenous Australians.

...

We cannot imagine that the descendants of people whose genius and resilience maintained a culture here through fifty thousand years or more, through cataclysmic changes to the climate and environment, and who then survived two centuries of dispossession and abuse, will be denied their place in the modern Australian nation.<sup>37</sup>

Constitutional expert, Professor George Williams argues that 'the story of our nation is incomplete without the histories of the peoples who inhabited the continent before white settlement'.<sup>38</sup> In fact it has been argued that in failing to acknowledge the prior presence of Aboriginal and Torres Strait Islander peoples, the current Constitution works to perpetuate the myth of *terra nullius* (no man's land).<sup>39</sup>

When the British arrived they treated the land now known as Australia as 'no man's land'. This characterisation was justified because the 'indigenous inhabitants were regarded as barbarous or unsettled and without law'.<sup>40</sup> The historic High Court decision on *Mabo* swept away the historical myth of *terra nullius*. The High Court decided:

The fiction by which the rights and interests of indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country.<sup>41</sup>

However, despite the advances made in the *Mabo (No 2)* decision, the Constitution continues to overlook the prior presence of Aboriginal and Torres Strait Islander peoples and societies.

Recognising Aboriginal and Torres Strait Islander peoples' within the Constitution will enrich the nation's identity, making it an inclusive one that reflects both the 'old' and the 'new' Australians.

36 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister). At <http://www.aph.gov.au/hansard/reps/dailys/dr130208.pdf> (viewed 10 November 2010).

37 The Hon P Keating MP, Prime Minister, *Redfern Speech: Year of the world's Indigenous people* (Speech delivered at Redfern, 10 December 1992). At <http://www.keating.org.au/main.cfm> (viewed 23 September 2010).

38 G Williams, 'Old-style racism still in constitution', *Sydney Morning Herald*, 14 September 2010. At <http://www.smh.com.au/action/printArticle?id=1924860> (viewed 14 September 2010).

39 G Winterton, 'A New Constitutional Preamble' (1997) 8 *Public Law Review* 186, p 187.

40 *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 37-38 (Brennan J).

41 *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 42 (Brennan J).

(ii) *Improving the effectiveness of our democracy: Protecting the human rights of the Australian community*

Keating's Redfern Address described the test of extending care, dignity and hope to the Aboriginal and Torres Strait Islander peoples of Australia as the fundamental attributes of Australia's reputation as a first rate social democracy.

**Text Box 2.4: The Redfern Address: Prime Minister Paul Keating**

[I]n truth, we cannot confidently say that we have succeeded as we would like to have succeeded if we have not managed to extend opportunity and care, dignity and hope to the indigenous people of Australia – the Aboriginal and Torres Strait Island people.

This is a fundamental test of our social goals and our national will: our ability to say to ourselves and the rest of the world that Australia is a first rate social democracy, that we are what we should be – truly the land of the fair go and the better chance.<sup>42</sup>

Unfortunately, as noted by George Williams, Australia

holds the dubious distinction of being perhaps the only country in the world whose Constitution still contains a 'racism power' [section 51(xxvi)] that allows the Parliament to enact racially discriminatory laws.<sup>43</sup>

Section 25 of the Constitution also contemplates the exclusion of voters based on race. It was aptly described by the 1988 Constitutional Convention as 'odious'.<sup>44</sup> It has no place in a modern democracy. This provision reflects that for decades after Federation, Australian states denied Aboriginal and Torres Strait Islander peoples voting rights.<sup>45</sup> The potential for people to be disqualified from voting extends to all races and is not limited to Aboriginal and Torres Strait Islander peoples. This provision, that contemplates discrimination on the basis of race, has not been amended or remedied.<sup>46</sup>

George Williams points out that Australia's Constitution was drafted against a backdrop of racism that led to the White Australia policy and a range of other discriminatory laws and practices.<sup>47</sup>

The drafters of the Constitution were men of their time. Their thinking was influenced by the 'political and social imperatives' of the day.<sup>48</sup>

42 The Hon P Keating MP, Prime Minister, *Redfern Speech: Year of the world's Indigenous people* (Speech delivered at Redfern, 10 December 1992). At <http://www.keating.org.au/main.cfm> (viewed 23 September 2010).

43 G Williams, 'The Races Power and the 1967 Reference', unpublished article developed from 'Race and the Australian Constitution: From Federation to Reconciliation' (2000) 38 *Osgoode Hall Law Journal* 643.

44 Constitutional Commission, *Final Report of the Constitutional Commission* (1988), p 16.

45 G Williams, 'Old-style racism still in constitution', *Sydney Morning Herald*, 14 September 2010. At <http://www.smh.com.au/action/printArticle?id=1924860> (viewed 14 September 2010).

46 I note, however, that there are no current state laws which do discriminate on the basis of race in allocating voting rights. Whether new laws that denied particular racial groups the right to vote could be validly enacted is unclear – due to the operation of the RDA and the Constitution, s 109.

47 G Williams, 'Old-style racism still in constitution', *Sydney Morning Herald*, 14 September 2010. At <http://www.smh.com.au/action/printArticle?id=1924860> (viewed 14 September 2010).

48 P Dodson, *Can Australia Afford Not to be Reconciled* (Speech delivered at the National Indigenous Policy and Dialogue Conference, UNSW, Sydney, 19 November 2010), p 10. At [http://ipdru.arts.unsw.edu.au/media/File/Dodson\\_keynote.rtf](http://ipdru.arts.unsw.edu.au/media/File/Dodson_keynote.rtf) (viewed 24 November 2010).



Australia has long since progressed from the views of this time in other important ways – for example women’s suffrage was achieved in the early years of the new Federation (when all women were entitled to vote) and the White Australia policy was ended in the early 1970s.

So why does this historical backdrop continue to inform our contemporary legal landscape in relation to Aboriginal and Torres Strait Islander peoples?

The proposed referendum provides an opportunity to address this fundamental flaw in the Constitution, which is incompatible with an effective social democracy.

The *Social Justice Report 2008* argued that while constitutional change cannot be a panacea for everything, it is about ensuring that the ‘founding document sets out the ambitions and expectations for all Australians’.<sup>49</sup> It argues that the Constitution should ‘reflect a modern, twenty first century Australia by providing a legal foundation for reconciliation, where human rights are respected at all levels of government’.<sup>50</sup>

The absence of human rights protections, particularly protection against discrimination, from the Constitution does not only affect Aboriginal and Torres Strait Islander peoples. This affects *all* Australians.

*(iii) Headway towards a reconciled nation*

Inaugural Co-Chair of the National Congress of Australia’s First Peoples (National Congress), Sam Jeffries believes that:

To create a meaningful and lasting partnership, Aboriginal and Torres Strait Islanders must be part of the Constitution – the document that defines the nation’s soul.

I have confidence that there is goodwill in the community to see this type of practical reconciliation accomplished.

The Congress sees reform as a necessity to underpin a new relationship with all Australians. This is fundamental to build a just and modern Australia.<sup>51</sup>

The acknowledgement of the existence of Aboriginal and Torres Strait Islander peoples as a unique element of the nation is something of which all Australians can be proud.

Achieving a successful referendum will not be easy and it will require a united effort. Australians will need to walk together and talk together in order to achieve reform to the Constitution so that it truly reflects the heart and soul of the nation. In this way the process of undertaking a campaign for constitutional recognition can itself have a reconciling effect.

Larissa Behrendt has noted that throughout Australia’s history there have been a number of significant moments when Australians have stood up and spoken out in support of Aboriginal and Torres Strait Islander peoples.<sup>52</sup> The 1967 referendum was one such moment. More recently there was the Reconciliation March in the year 2000, and the National Apology in 2008. If it were possible to harness such historic

49 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), p 64. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 13 September 2010).

50 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), pp 64-65. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 13 September 2010).

51 Australian Human Rights Commission and the National Congress of Australia’s First Peoples, *Calls for Constitutional recognition on National Aboriginal and Islanders Day* (Joint Media Release, 9 July 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/72\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/72_10.html) (viewed 10 December 2010).

52 L Behrendt, ‘A Constitution For All’, *Big Ideas*, 3 August 2010, <http://www.abc.net.au/tv/bigideas/stories/2010/08/03/2971171.htm> (viewed 22 November 2010).

moments of support, constitutional reform to recognise Aboriginal and Torres Strait Islander peoples would be more than a mere possibility. Professor Mick Dodson has also professed his belief in the capacity of the Australian population to embrace our recognition:

... [T]he capacity to embrace the past honestly, and acknowledge its truths, goes to the very depths of our national identity and what we stand for as peoples. We must rid ourselves of this psychological cloak of darkness before it becomes our shroud.

...

It's not a big ask.

It's something that Australians are eminently capable of doing.<sup>53</sup>

I agree with Larissa Behrendt and Mick Dodson. Constitutional reform is something Australians are ready for.

By its very nature, the Constitution is an instrument of the people. It is the people who have the power to change or amend it. Through this reform process, the nation will be able to decide how it wants its first peoples positioned in the nation and what sort of protections it wants to assure for all its citizens.

I am confident that the nation can agree on a reform process that maximises benefits for Aboriginal and Torres Strait Islander peoples, for the broader Australian community and for the nation.

### 2.3 What could reform look like?

To ensure this destination is reached, the nation needs to know what reform could look like. It is essential that the proposal put to the Australian people is sound and sensible.<sup>54</sup> This requires informed debate about the various possibilities for reform.

The proposed reform should be underpinned by a real commitment to:

- improve the lives of Aboriginal and Torres Strait Islander peoples
- ensure adequate protection of the human rights of all Australians
- ensure a solid foundation upon which to build a reconciled nation.

A reform proposal grounded in these commitments is something that I believe Aboriginal and Torres Strait Islander peoples and the broader Australian public can relate to and support.

The extent of reform could be limited to inserting a new preamble that recognises Aboriginal and Torres Strait Islander peoples as the first peoples of Australia and our unique place in the history and future of the nation. Alternatively, the opportunity could be taken to the next level and address issues within the body of the Constitution.

Early discussions about the extent of reform indicated a narrow focus on '[only] options for recognising Indigenous people in the preamble to the Constitution'.<sup>55</sup>

---

53 M Dodson, *Corroboree 2000 speech* (Speech delivered at Corroboree 2000: Towards Reconciliation, Sydney, 27 May-3 June 2010). At [http://www.antar.org.au/issues\\_and\\_campaigns/native\\_title/mick\\_dodson\\_corroboree\\_speech](http://www.antar.org.au/issues_and_campaigns/native_title/mick_dodson_corroboree_speech) (viewed 23 September 2010).

54 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), pp 254-260.

55 The Hon J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Address to the Garma Festival* (Speech delivered at the Garma Festival, Yirrkala, 8 August 2010). At <http://www.alp.org.au/federal-government/news/speech--jenny-macklin,-address-to-the-garma-festiv/> (viewed 10 November 2010).

While this appears to be the position of some, the majority of Aboriginal and Torres Strait Islander people that I have canvassed constitutional reform with hope to achieve broader reform that addresses the discriminatory provisions within the Constitution. Megan Davis and Dylan Lino observe that there are a number of key possibilities for reform within the existing provisions of the Constitution, some of which have been proposed over the years including:

- inserting a new preamble recognising Aboriginal and Torres Strait Islander peoples
- amending the races power (s 51 (xxvi)) – either total repeal or amendment so that it can only be used for beneficial purposes
- the deletion of s 25, which contemplates electoral disqualification on the basis of race
- dedicated parliamentary seats for Indigenous people
- the entrenchment of a treaty or a treaty-making power
- the protection of Indigenous-specific rights, such as rights to lands and territories
- guarantees of equality and non-discrimination
- changes to how federalism impacts on Indigenous people
- the move to an Australian republic.<sup>56</sup>

Megan Davis, in her role as Director of the Indigenous Law Centre based in the Faculty of Law at the University of New South Wales, heads a research project on constitutional reform and Indigenous peoples. This project is currently considering these possibilities.<sup>57</sup>

Decisions on the extent of reform will require significant, detailed and informed debate. As public representatives, parliamentarians at all levels and across all persuasions, must be informed by the view of the broader Australian community, garnered through public education campaigns and consultations.

### (a) Preambular reform

The preamble for the Australian Constitution is contained within the *Commonwealth of Australia Constitution Act 1900* (Imp), the Act of the British Parliament that established the Australian Commonwealth. As such it precedes the Constitution, and is not formally part of the Constitution itself.

There is legal uncertainty as to whether the existing preamble can be altered by referendum pursuant to s 128 of the Constitution. As a result, the 1999 referendum proposed to insert a new preamble at the beginning of the Constitution, rather than to amend the preamble at the head of the *Australia Constitution Act 1900* (Imp).<sup>58</sup>

Despite not being formally part of the Constitution, the existing preamble

can be legitimately consulted for the purpose of solving an ambiguity or fixing the connotation of words which may possibly have more than one meaning....[b]ut the

---

56 M Davis and D Lino, 'Constitutional Reform and Indigenous Peoples' (2010) 7(19) *Indigenous Law Bulletin* 3, pp 3-4.

57 Further information about this project can be found at Indigenous Law Centre, UNSW, *ILC Home*, <http://www.ilc.unsw.edu.au> (viewed 13 September 2010).

58 See T Blackshield and G Williams, *Australian Constitutional Law and Theory: Commentary and Materials* (5th ed, 2010), p 1354.

preamble cannot either restrict or extend the legislative words, when the language is plain and not open to doubt, either as to its meaning or scope.<sup>59</sup>

The existing preamble's focus is on the federation of Australia. It includes the following elements:

- the agreement of the people of Australia
- their reliance on the blessing of Almighty God
- the purpose to unite
- the character of the union – indissoluble
- the form of the union – a Federal Commonwealth
- the dependence of the union – under the Crown
- the government of the union – under the Constitution
- the expediency of provision for admission of other colonies as States.<sup>60</sup>

A significant amount of work has already been progressed in suggesting appropriate alternative wording for a new preamble. As outlined below, one of the key lessons to be learned from the 1999 referendum on the preamble is the importance of full and proper consultation with Aboriginal and Torres Strait Islander peoples on the form of recognition.

It is my view that, in order to be meaningful, the recognition of Aboriginal and Torres Strait Islander peoples in a new preamble should include acknowledgment:

- of our historical sovereignty, stewardship, ownership and custodianship prior to colonisation
- that we are the oldest living cultures in the world and that the Australian nation is committed to preserving and revitalising our cultures
- that Aboriginal and Torres Strait Islander peoples as traditional owners, custodians and stewards continue to make a unique and significant contribution to the life of the nation
- that our cultures, identities and connections to our lands and territories continue.

### **(b) Reform to the body of the Constitution**

It would be unwise to prematurely confine this debate on constitutional reform to preambular recognition of Aboriginal and Torres Strait Islander peoples. Mick Dodson has suggested that:

The three key international principles of human rights I would like to see entrenched in our Constitution are the principles of equality, non-discrimination and the prohibition of racial discrimination.<sup>61</sup>

---

59 J Quick and R R Garran, *The Annotated Constitution of the Australian Commonwealth 1901* (1976) cited in Parliament of Australia, *Parliamentary Bills Digest 32: Constitution Alteration (Preamble) 1999* (1999-2000). At <http://www.aph.gov.au/LIBRARY/pubs/bd/1999-2000/2000bd032.htm> (viewed 13 September 2010).

60 J Quick and R R Garran, *The Annotated Constitution of the Australian Commonwealth 1901* (1976) cited in G Griffith, *Constitutional Recognition of Aboriginal People*, e-brief 11/2010, NSW Parliamentary Service (2010), p 3. At [http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/ConstitutionalRecognitionofAboriginalPeople/\\$File/E+Brief+Constitutional+Recognition+of+Aboriginal+People.pdf](http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/ConstitutionalRecognitionofAboriginalPeople/$File/E+Brief+Constitutional+Recognition+of+Aboriginal+People.pdf) (viewed 13 September 2010).

61 M Dodson, *The continuing relevance of the Constitution for Indigenous peoples* (Speech delivered at National Archives of Australia, Canberra, 13 July 2008). At <http://www.naa.gov.au/collection/explore/federation/talks/dodson.aspx> (viewed 15 October 2010).

I believe considerations for more substantive reform should address the provisions within the body of the Constitution that permit, enable or anticipate racial discrimination – namely ss 25 and 51(xxvi).

The races power (s 51(xxvi)) enables the Parliament to make ‘special laws’ with regard to such groups. The problem is that the Constitution does not stipulate that these ‘special laws’ or policies should *benefit* those affected, as opposed to discriminating against them.<sup>62</sup>

On this basis, the current Chief Justice of the High Court has noted that the races power is still not satisfactory despite the changes to it from the 1967 referendum:

The intention of the [1967] 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>63</sup>

Section 51(xxvi) is applicable to all races within the Australian community. For this reason, all Australians are not protected from being discriminated against on the basis of their race.

Addressing this situation is, however, complex. My predecessor has warned against focussing on the wording of s 51(xxvi) as providing the solution. A focus on clarifying that this provision can only be used for beneficial purposes could provide ineffective protection. This is because determining what actually constitutes a benefit is essentially a complicated and subjective test:

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 [or other races], even though the legislation was contrary to the consent of the peoples.<sup>64</sup>

For this reason, reforms that introduce a broader protection against discrimination may be more effective (as discussed below).

The *Social Justice Report 2008* identified the need to reform the body of the text of the Constitution including:

- removing s 25 which anticipates people being disqualified from voting on the basis of their race
- inserting a provision that guarantees, for all Australians, equality before the law and freedom from discrimination – with such a protection drafted in a way that would guide the operation of s 51(xxvi) to ensure that ‘special laws’ for the people of a particular race could **not be made** if they were discriminatory.<sup>65</sup>

Constitutional reform processes by their nature form an integral part of building a nation’s identity. In the 21st century I think that the majority of Australians would be offended were they to know that their Constitution permits the Commonwealth

---

62 See *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

63 The Hon Chief Justice R French, *Dolores Umbridge and the Concept of Policy as Legal Magic* (Speech delivered at the Australian Law Teachers’ Association National Conference, Perth, 24 September 2007). At [http://www.fedcourt.gov.au/aboutct/judges\\_papers/speeches\\_frenchj29.html](http://www.fedcourt.gov.au/aboutct/judges_papers/speeches_frenchj29.html) (viewed 10 November 2010).

64 See T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), p 72. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 10 November 2010).

65 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), pp 62-76. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 13 September 2010).

Parliament to validly enact laws that are racially discriminatory. Or that contemplates that people could be disqualified from voting simply on the basis of their race.

I do not think these provisions reflect what the nation wants in a modern Australia. In fact, quite the opposite.

Most Australians I meet pride themselves on being part of a liberal democratic society that does not condone discrimination or racism. However, it can be inferred from the National Human Rights Consultation that the majority of Australians are probably not aware these provisions are contained in the Constitution.<sup>66</sup>

The presence of these provisions in the nation's foundational document goes to the core of Australia's national identity and beliefs. I am a firm believer that if Australians were aware that their Constitution did not protect its citizens from discrimination, the nation would take collective action to bring about reform to enshrine the principles of non-discrimination and equality.

Making changes to the body of the Constitution will require the innovative thinking of constitutional technicians to work through the various opportunities and options for change in order to present clear, considered and developed proposals to the Australian public.

For example, the research project headed by Megan Davis on constitutional reform and Indigenous peoples, highlighted above, is examining a range of reforms to the Constitution. The extent of reform should be informed by the results of the research project and the views of other experts. It should also be informed by the views and voices of Aboriginal and Torres Strait Islander peoples, who have historically been excluded from such processes.

Potential proposals must be capable of being readily communicated to and understood by the Australian public. Persuasive arguments, using plain-English, must be developed to justify why reform will benefit Aboriginal and Torres Strait Islander peoples and the broader Australian community.

Ensuring the Australian community can effectively participate in the processes leading up to the referendum will require them to be fully informed and educated on these issues. This will be discussed further below.

## 2.4 What are the next steps to a successful referendum?

The Australian Constitution can only be altered by referendum. Section 128 of the Constitution and the *Referendum (Machinery Provisions) Act 1984* (Cth) set out the procedure for amending the Constitution by referendum.

---

<sup>66</sup> See National Human Rights Consultation Committee, *National Human Rights Consultation Report*, Attorney-General's Department (2009), p 17. At [http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report\\_NationalHumanRightsConsultationReportDownloads](http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report_NationalHumanRightsConsultationReportDownloads) (viewed 13 September 2010).

### **Text Box 2.5: Procedure for amending the Australian Constitution**

#### **The key steps to holding a referendum<sup>67</sup>**

1. The proposed changes to the Constitution are set out in a Bill of Parliament. The Bill must be passed by an absolute majority of both houses of Parliament. Alternatively, if there is disagreement between the houses that has lasted for three months over the proposal, the referendum as originally proposed in either house may proceed.
2. The referendum is held between two and six months after the Bill is passed by Parliament.
3. A majority of voters nationwide, plus a majority of voters in a majority of States (four out of six) must approve the referendum. This is known as the 'double majority'.
4. After passage by the voters, the proposed alteration to the Constitution requires the Royal Assent.<sup>68</sup>

#### **The referendum process**

##### ***The Yes/No arguments***

Within four weeks after the Bill is passed, a majority of the Parliamentarians who voted for the proposal prepare a 'Yes' case (the arguments for making the amendments); and a majority of those who voted against it prepare a 'No' case (the arguments for voting against the amendments). If there is unanimous support only a 'Yes' case is prepared.

##### ***Holding the referendum***

After the Bill is passed the Governor-General issues a writ for the referendum.

The polling day, which must be on a Saturday, is set between 33 and 58 days after the issue of the writ.

The Electoral Commissioner must provide every elector on the roll later, at least 14 days before polling day, the following:

- a statement outlining the proposed amendments
- the 'Yes' case
- the 'No' case (if there is one).

At the referendum electors vote by writing either 'Yes' or 'No' in the box opposite each question on the ballot paper.

##### ***The result of the referendum***

If the referendum is supported by a double majority the Governor-General gives the proposed law Royal Assent and the Constitution is altered.

The stringent requirements for 'double majority' indicate that the drafters did not intend the Constitution to be easily amended. Nor has it proved to be:

- there have been 44 referendums held since 1901
- only eight of these have been successful
- the last successful referendum was held in 1977

67 This information is sourced from the Australian Electoral Commission website: Australian Electoral Commission, *Referendums Overview*, [http://www.aec.gov.au/Elections/referendums/Referendums\\_Overview.htm](http://www.aec.gov.au/Elections/referendums/Referendums_Overview.htm) (viewed 13 September 2010).

68 The rules governing a referendum are contained in the *Referendum (Machinery Provisions) Act 1984* (Cth).

- the last referendum was held in 1999.<sup>69</sup>

Australia's Constitution ranks as the most difficult in the world to amend.<sup>70</sup> As a consequence, the vast majority of our Constitution remains as originally enacted. It continues to reflect the legacy of being an instrument crafted in an era when racial discrimination was not considered unacceptable.

Despite the apparent difficulty of the task at hand it must be remembered that the original drafters of the Constitution in drafting s 128 (the referendum provision), empowered the people to mould and shape the Constitution to reflect the nature of our current society.<sup>71</sup> It is **we the people** who can change our Constitution.

Aboriginal and Torres Strait Islander peoples have been the subject of three referendums to date (1944, 1967, and 1999), of which only one was successful (1967). The insertion of a new preamble has been the subject of one referendum to date (1999) and it was unsuccessful.

### Text Box 2.6: The 1944, 1967 and 1999 referendums

#### The 1944 referendum<sup>72</sup>

The 1944 referendum sought to give the federal government power over a period of five years, to legislate on a wide variety of matters including the ability to legislate for Indigenous Australians.<sup>73</sup> It obtained majority in two states and only obtained 45.99% of the national vote, and therefore was not carried.<sup>74</sup>

#### The 1967 referendum

On 27 May 1967, after years of campaigning by numerous Aboriginal and Torres Strait Islander leaders and organisations, the nation went to the polls to decide if the Constitution should be amended to:

- give the federal parliament the power to make laws in relation to Aboriginal and Torres Strait Islander people (amending s 51(xxvi))
- allow for Aboriginal and Torres Strait Islander people to be included in the census (removing s 127).<sup>75</sup>

The result was an overwhelming 90.77% vote to support the referendum. A majority in all states voted to support the referendum. It is the most successful referendum result in Australian history.<sup>76</sup>

69 T Blackshield and G Williams, *Australian Constitutional Law and Theory: Commentary and Materials* (5th ed, 2010), pp 1340, 1399-1404.

70 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 11.

71 P Dodson, *Can Australia Afford Not to be Reconciled* (Speech delivered at the National Indigenous Policy and Dialogue Conference, UNSW, Sydney 19 November 2010), p 10. At [http://ipdru.arts.unsw.edu.au/media/File/Dodson\\_keynote.rtf](http://ipdru.arts.unsw.edu.au/media/File/Dodson_keynote.rtf) (viewed 24 November 2010).

72 The 1944 referendum will not be considered here for comparative analysis in this Chapter.

73 Constitution Alteration (Post-War Reconstruction and Democratic Rights) Bill 1944 (Cth).

74 The Australian Electoral Commission, *Referendum Dates and Results 1906 – Present*, [http://www.aec.gov.au/Elections/referendums/Referendum\\_Dates\\_and\\_Results.htm](http://www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm) (viewed 1 November 2010).

75 Constitution Alteration (Aboriginals) Bill 1967 (Cth).

76 The Australian Electoral Commission, *Referendum Dates and Results 1906 – Present*, [http://www.aec.gov.au/Elections/referendums/Referendum\\_Dates\\_and\\_Results.htm](http://www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm) (viewed 1 November 2010).



### The 1999 referendum

Following much public debate and a Constitutional Convention on whether Australia should become a republic, the nation went to the polls on 6 November 1999. The referendum proposed two amendments to:

- alter the Constitution so that Australia became a republic<sup>77</sup>
- insert a new preamble.<sup>78</sup>

The result was a no vote for both amendments. On the question of a republic, 54.87% voted against the proposal and on the question of the preamble 60.7% voted no. In no state did a majority vote yes for either question.<sup>79</sup>

George Williams and David Hume have analysed Australia's history of referendums and identified some critical factors that are essential for a successful referendum. They include:

- bipartisan support
- popular ownership
- popular education.<sup>80</sup>

While there are lessons to be learnt from all previous referendums, for the purposes of this Chapter, I will use these key factors to compare the stark outcomes of the 1967 and 1999 referendums. Rather than providing a comprehensive historical analysis of these two referendums, I will draw out key lessons that can provide guidance for the proposed referendum.

#### (a) Bipartisan support

National bipartisan support is essential for the successful passage of any referendum. While it is not a guarantee for success, no referendum has been successful without it. Because of the 'double majority' needed, bipartisan support at the state and territory level is also essential.<sup>81</sup>

At the moment bipartisan support for recognition of Aboriginal and Torres Strait Islander peoples in the Constitution has been expressed by the Labor Party, the Coalition and the Greens. The Independents have also expressed their support.

Maintenance of this level of bipartisan support throughout the course of the referendum process will be critical. For instance, if there is no dissent during the passage of the referendum Bill through both houses of parliament, only a 'Yes' case needs to be prepared. If this is achieved, a 'No' case will not be developed.

##### (i) *The 1967 referendum*

The 1967 referendum was preceded by over 30 years of advocacy by Aboriginal and Torres Strait Islander peoples and the broader Australian population. The years of advocacy led to an extended period of national debate. It was this debate that helped

77 Constitution Alteration (Establishment of Republic) Bill 1999 (Cth).

78 Constitution Alteration (Preamble) Bill 1999 (Cth).

79 Australia Electoral Commission, *1999 Referendum Report and Statistics*, [http://www.aec.gov.au/Elections/referendums/1999\\_Referendum\\_Reports\\_Statistics/Key\\_Results.htm](http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/Key_Results.htm) (viewed 1 November 2010).

80 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), ch 7. Three of the five factors they identify are discussed here.

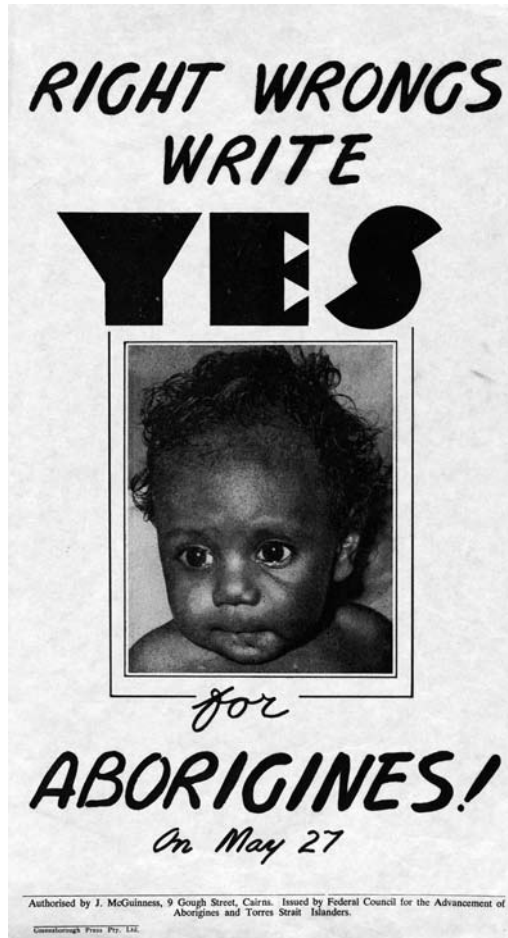
81 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 244.

generate a climate of consensus. This in turn helped achieve a political consensus that garnered bipartisan support.<sup>82</sup>

The strength of the parliamentary support for the referendum was reflected in the fact that a 'No case' was not put to the Australian people.<sup>83</sup>

Without a 'No case' the message to support the referendum was communicated to the Australian people in a clear and concise way, 'Vote Yes for the Aborigines'. The pictures and the slogans of the Vote Yes Campaign in the 1967 referendum captured the hearts and minds of Australian people.

Figure 2.1: Pamphlet, 'Right Wrongs Write YES for Aborigines on May 27'<sup>84</sup>



82 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 232.

83 The only other time there was not a 'No case' run was the 1977 referendum (retirement of judges), which was the third most successful referendum in history: G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 232.

84 Right Wrongs Write Yes for Aborigines – photograph, Box 175, Gordon Bryant Papers, 1917-1991, MS8256/11, National Library of Australia.

(ii) *The 1999 referendum*

In direct contrast to the 1967 referendum, the question on the proposed preamble in the 1999 referendum was characterised by political disunity. This politicised the campaign and undermined its chances of success.

The question of inserting a new preamble gained momentum during the Constitutional Convention in 1998, the Australian Government's formal process of consultation on the issue of whether Australia should become a republic.<sup>85</sup> The Constitutional Convention identified several elements that could be reflected in a new preamble, including recognition of Aboriginal and Torres Strait Islander peoples.<sup>86</sup>

It was during the drafting of the proposed text for the new preamble that the process became politicised. This drafting was undertaken largely by the then Prime Minister, working with poet Les Murray, and was done without bipartisan support.<sup>87</sup> Further differences between the political parties emerged over the proposed wording for the recognition of Aboriginal and Torres Strait Islander peoples.

The Opposition pre-empted the Prime Minister's version with its own preamble. This version was subsequently supported by the Australian Democrats and the Australian Greens. Their version recognised Indigenous Australians as 'the original occupants and custodians of our land'.<sup>88</sup>

The Prime Minister's draft was released for comment on 23 March 1999. He considered it to reflect 'a sense of who we are, a sense of what we believe in, and a sense of what we aspire to achieve in the future'.<sup>89</sup> It only referred to the historical nature of the Aboriginal and Torres Strait Islander peoples connection with the land, and omitted any reference to custodianship:

Since time immemorial our land has been inhabited by Aborigines and Torres Strait Islanders, who are honoured for their ancient and continuing cultures.<sup>90</sup>

Almost seven hundred submissions were received on the draft preamble. The response was largely critical of the content of the proposed preamble including the failure to go beyond recognition of prior occupation. In addition to the substance of the proposed preamble, there were objections to the process by which it was drafted.<sup>91</sup>

On 11 August 1999, the final version of the second preamble was released with the introduction in the House of Representatives of the Constitution Alteration (Preamble) Bill 1999.

---

85 During the previous decade there had been discussions around changing the preamble: See M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

86 Commonwealth, *Constitutional Convention*, 13 February 1998, p 949. At <http://www.aph.gov.au/hansard/conv/hancon.htm> (viewed 13 September 2010).

87 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

88 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

89 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

90 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

91 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

### *(iii) Lessons learnt*

The contrast between the bipartisan nature of the 1967 referendum and the partisan politics that undermined the 1999 preambular proposal could not be more stark.

It is essential that as this referendum campaign progresses, the current bipartisan support is maintained. Strong and secure bipartisan support from all levels and persuasions of government, as well as the community sector will be critical to success.

With bipartisan support from all of the major political proponents at the Federal level, we have achieved the first major milestone in the journey ahead. If bipartisan support can be maintained and the referendum Bill can pass through Parliament unanimously, we might again be in a position for another campaign with only the 'Yes Case'. This would be an optimal outcome.

It will also be important to secure bipartisan support at the state and territory levels of governments. As an Australian Government priority, constitutional reform must be placed on the COAG agenda.

### **(b) Popular ownership**

There is often greater support and strength for a proposal that is championed by the people. Proposals that are perceived to be developed for political purposes or written by a minority of people in positions of power are less likely to be seen as relevant to people's lives, and therefore less likely to garner their support.

It is therefore not surprising that creating opportunities for all Australians to participate in discussion and debates throughout the entire referendum process are necessary. This creates popular ownership in the process. Providing sufficient time and opportunity for comprehensive debate on the issues has been a critical factor in successful referendums. It is important that the referendum is not perceived as owned either by politicians or the elite, but by the nation as a whole.<sup>92</sup>

Widespread involvement by the public must continue through to the development of the proposed amendments.<sup>93</sup>

### *(i) The 1967 referendum*

The success of the 1967 referendum did not happen over night. Nor did it happen in a vacuum. A critical factor in the outcome was the years of campaigning that preceded the vote, by both Aboriginal and Torres Strait Islander peoples as well by members of the broader Australian public.

Many Aboriginal and Torres Strait Islander men and women fought long and painful battles to achieve such a great victory. The battle began well over 30 years before the referendum. Activists such as William Cooper, John Patten (sometimes known as Jack), William (Bill) Ferguson, and Charlie Perkins, Pearl Gibbs and Joyce Clague just to name a few, all played a significant role in the lead up to the 1967 referendum. Others like, Faith Bandler, a South Sea Islander woman, also fought alongside our leaders.

A number of events and organisations influenced and educated the broader Australian community about the conditions that Aboriginal and Torres Strait Islander people were living in and the treatment they were subjected to. These organisations and events played an important role in influencing the decision to hold the referendum, including:

---

92 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 246.

93 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 247.

- **The bark petitions** presented to the Australian Prime Ministers and the Commonwealth Parliament over the years in 1963 (the only one to have been formally recognised), 1968, 1998 and 2008. The bark petitions are considered ‘founding documents’ of Australian democracy and were a catalyst for a long process of legislative and constitutional reform to recognise the rights of Aboriginal and Torres Strait Islander peoples.<sup>94</sup>
- The establishment of the **Australian Aboriginal League (AAL)** founded by Yorta Yorta man William Cooper.<sup>95</sup>
- The establishment of the **Aboriginal Progressive Association (APA)** was led by Fred Maynard, John Patten and William Ferguson. The APA with the AAL declared that ‘Australia Day’ in 1938 – coinciding with the 150th anniversary of the landing of the colonisers – would be a ‘**Day of Mourning**’.<sup>96</sup>
- The **Federal Council for the Advancement of Aboriginal and Torres Strait Islanders (FCAATSI)** – formerly the Federal Council of Aboriginal Advancement – was established as an overarching body for the various Aboriginal political organisations emerging in the late 1950s. FCAATSI focused on equal citizenship rights and specific rights for Aboriginal and Torres Strait Islander peoples. As early as 1958 FCAATSI officially decided to push for a referendum.<sup>97</sup>
- Coinciding with the civil rights movement in the United States, students at the University of Sydney formed the **Student Action for Aborigines (SAFA)** headed by Charlie Perkins. In 1965 SAFA undertook the **Freedom Rides** – travelling across regional NSW towns drawing public attention to the treatment of Aboriginal people.<sup>98</sup>
- In March 1962 the *Commonwealth Electoral Act 1962* (Cth) belatedly provided for Aboriginal and Torres Strait Islander peoples **the right to vote** in federal elections. States and territories also amended their laws and by 1965 Aboriginal and Torres Strait Islander people across Australia had the right to vote.<sup>99</sup>
- The **Aboriginal Australian Fellowship (AAF)** was a broad coalition. One of the AAF’s key activities was to campaign for changes to the Constitution.<sup>100</sup>
- The **Vote Yes Campaign** was launched on 2 April 1957. The campaign was led by Indigenous activists including Pearl Gibbs and Joyce Clague and non-Indigenous activists including Faith Bandler and Lady Jessie Street. The ten year campaign involved rallies and demonstrations

---

94 Australian Government, *Bark petitions: Indigenous art and reform for the rights of Indigenous Australians*, <http://www.cultureandrecreation.gov.au/articles/indigenous/barkpetitions/> (viewed 24 September 2010).

95 National Museum of Australia, *William Cooper*, <http://www.indigenoustrights.net.au/person.asp?plD=962> (viewed 13 September 2010).

96 Australian Institute of Aboriginal and Torres Strait Islander Studies, *The Little Red Yellow Black Book, An introduction to Indigenous Australia* (2nd ed, 2008), p 103.

97 Australian Institute of Aboriginal and Torres Strait Islander Studies, *The Little Red Yellow Black Book, An introduction to Indigenous Australia* (2nd ed, 2008), p 107.

98 Australian Institute of Aboriginal and Torres Strait Islander Studies, Library Online, *Commemorating 40 Years of the Freedom Ride – Freedom Riders*, <http://www1.aiatsis.gov.au/exhibitions/freedomride/start.htm> (viewed 8 December 2010).

99 Australian Electoral Commission, *History of the Indigenous Vote* (2006), p 8. At [http://www.aec.gov.au/pdf/education/resources/history\\_indigenous\\_vote.pdf](http://www.aec.gov.au/pdf/education/resources/history_indigenous_vote.pdf) (viewed 13 September 2010).

100 S Taffe, *Black and White Together FCAATSI: The Federal Council for the Advancement of Aboriginal and Torres Strait Islanders, 1958–1972* (2005), p 4.

across Australia. Support for the referendum began to grow rapidly. Petitions were repeatedly presented to Parliament House.<sup>101</sup>

Finally, after years of advocacy, in February 1967 the Australian Government agreed to hold a referendum on this issue.<sup>102</sup> The preceding campaigns influenced the decision to hold the referendum, and as a consequence there was popular ownership of it. Importantly, this ownership extended to both Aboriginal and Torres Strait Islander peoples and the broader Australian public.

(ii) *The 1999 referendum*

The Australian Government undertook a formal consultation on the issue of whether Australia should become a republic. The consultation, held in February 1998, was in the form of a Constitutional Convention.

One hundred and fifty-two delegates from all around Australia attended the Convention. The delegates were a combination of elected and appointed delegates.

Seventy-six delegates were appointed by the Australian Government and included parliamentary, community, Indigenous and youth representatives from every state and territory. The other 76 delegates were elected by the Australian voters. Having half of the delegates elected by the Australian population was a means of ensuring the Convention was representative.

A voluntary postal ballot was conducted by the Australian Electoral Commission in late 1997 to elect these delegates. It was the largest national postal ballot ever held in Australia, with the participation of 47% of eligible voters. The 76 elected delegates were chosen from 690 nominated candidates.

The delegates met for 12 days. During this time they examined different models for choosing a republican head of state. The options discussed included by direct election, appointment by a Constitutional Council, and election by Parliament. The delegates also considered issues such as the powers, title and tenure of a new head of state, and proposals for a new preamble to the Australian Constitution.

The government committed to submitting the republican model that emerged from the convention to a referendum to be held before the end of 1999. The Convention supported an in-principle resolution that Australia should become a republic and recommended that the 'bipartisan appointment of the President model' and other related constitutional changes be put to the Australian people at a referendum.<sup>103</sup>

The establishment of the Constitutional Convention was a representative process. However, as the campaign continued, it became more politicised and Australian people felt more isolated from the debates. It is critical that Australian people not only actively participate but feel a sense of ownership of the process.

The politicisation of the process and the focus on the republic itself marginalised the public and diluted and confused messaging about proposed preambular reforms. In the end, the debate about the preamble failed to capture the public's imagination.<sup>104</sup>

---

101 See B Attwood and A Markus, *The 1967 Referendum: Race, Power and the Australian Constitution* (2nd ed, 2007).

102 National Museum of Australia, *Cabinet decision 1967*, <http://www.indigenoustrights.net.au/subsection.asp?ssID=27> (viewed 13 September 2010).

103 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

104 M McKenna, *First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991-99*, Parliamentary Library Research Paper 16 (2000). At <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp16.htm#Feb> (viewed 13 September 2010).

Furthermore, the 1999 preamble proposal also contained several other controversial aspects (that did not relate to recognition of Aboriginal and Torres Strait Islander peoples), which meant that the proposal was unlikely to obtain sufficient support.<sup>105</sup>

The extent of recognition was also contentious. The Prime Minister's version of the preamble constrained itself to referring only to past occupation and recognising the 'continuing cultures' of Aboriginal and Torres Strait Islander peoples, but as several commentators noted at the time, it did not extend to *explicitly* recognising land ownership or custodianship prior to settlement.<sup>106</sup> This isolated many Aboriginal and Torres Strait Islander peoples from supporting the proposed preamble. This was influenced by the lack of consultation with Aboriginal and Torres Strait Islander peoples.<sup>107</sup>

### (iii) *Lessons learnt*

Much of the success of the 1967 referendum was due to the fact that the Vote Yes campaign built upon the momentum already generated by a series of preceding Indigenous rights campaigns. These campaigns were driven by key Aboriginal and Torres Strait Islander advocates and organisations who worked together with non-Indigenous advocates for the recognition of Aboriginal and Torres Strait Islander peoples' rights. The widespread consensus generated by extensive national debate over several years was fundamental to its success and contributed to a sense of public investment and ownership.<sup>108</sup>

In contrast the 1999 referendum, despite starting out as a representative process, became a political and elitist process with the Australian population becoming marginalised.

Referendums are the people's opportunity to change their nation's governance framework. The public must be front and centre throughout the entire process. The role of politicians is to facilitate and enable this public voice.

Consequently, the active engagement of the Australian public must be sought and achieved. To this end widespread consultation throughout the referendum process is fundamental to its success. There are two aspects of an engagement strategy that will be essential:

- engagement with Aboriginal and Torres Strait Islander peoples
- engagement with the broader Australian population.

In 1999, the lack of consultation and incorporation of Indigenous views in the draft preamble meant that it was viewed by many Aboriginal and Torres Strait Islander peoples as 'yet another blow to reconciliation'.<sup>109</sup> Proper engagement with Aboriginal and Torres Strait Islander peoples in the referendum process can itself be a vehicle of reconciliation. In this way, the process of engagement and consultation becomes as important as a positive outcome.

---

105 J Chesterman, 'Toward Indigenous Recognition in the Australian Constitution: Getting the Words Right' (2008) 7(4) *Indigenous Law Bulletin* 10. At <http://www.austlii.edu.au/au/journals/ILB/2008/12.html#fn22#fn22> (viewed 13 September 2010).

106 G Bird and L Kelly, 'Women Speak Out: Critical Perspectives on the Preamble to the Constitution' (2000) 6(1) *Australian Journal of Human Rights* 265. At <http://www.austlii.edu.au/au/journals/AJHR/2000/13.html#Heading144> (viewed 13 September 2010).

107 J Chesterman, 'Toward Indigenous Recognition in the Australian Constitution: Getting the Words Right' (2008) 7(4) *Indigenous Law Bulletin* 10. At <http://www.austlii.edu.au/au/journals/ILB/2008/12.html#fn22#fn22> (viewed 13 September 2010).

108 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 232.

109 L O'Donoghue quoted in M Saunders, 'Aborigines "insulted" by PM's draft', *The Age*, 21 February 1999, p 2.

The consultation process will need to be undertaken with Aboriginal and Torres Strait Islander peoples, drawing on their contributions for how best to reflect recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.

In addition to engaging with Aboriginal and Torres Strait Islander peoples there will need to be extensive engagement with the broader Australian community.

This debate should focus on Australia's national identity, belonging, and the place of Indigenous peoples in our society to ensure the broadest possible consensus for any proposed constitutional amendment.

As I said in my address to the National Press Club:

Yes, there will be debates, speeches, opinion pieces in the press, people prowling the parliamentary corridors, Constitutional lawyers at 10 paces, yea and nay sayers, documentaries, panel discussions, arguments at dinner parties, barbecues and in front bars – all of these things.

[It is] precisely all of these things that will build awareness, focus minds and hearts and help move us all forward as a nation.<sup>110</sup>

### (c) Popular education

The 2009 National Human Rights Consultation highlighted a general lack of knowledge and understanding by the Australian public of the nation's political and legal system, constitution and referendum processes.<sup>111</sup>

The lack of knowledge was of such an extent that the primary recommendation of the National Human Rights Consultation Committee was that education should be the highest priority for improving and promoting human rights in Australia.<sup>112</sup>

Consequently it is important that comprehensive and accurate information is provided to the public to inform their vote.

Further, past referendums have demonstrated that the greater the understanding among the Australian public of the issues being proposed, the greater the chance the referendum will be supported.<sup>113</sup>

The 'Yes/No' booklet often does not suffice to provide the balanced and credible information that is required.<sup>114</sup>

#### (i) The 1967 referendum

The advocacy that led up to the 1967 referendum was essential in raising awareness of the conditions faced by Aboriginal and Torres Strait Islander peoples in Australia at the time. This was an educative function in its own right.

However, a necessary part of any formal education campaign must be clear and concise messaging as to what the referendum is actually proposing to achieve.

---

110 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Towards a Reconciled Australia* (Speech delivered at the National Press Club, Canberra, 3 November 2010). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2010/20101103\\_npc.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20101103_npc.html) (viewed 20 November 2010).

111 National Human Rights Consultation Committee, *National Human Rights Consultation Report*, Attorney-General's Department (2009), p 17. At [http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report\\_NationalHumanRightsConsultationReportDownloads](http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report_NationalHumanRightsConsultationReportDownloads) (viewed 13 September 2010).

112 National Human Rights Consultation Committee, *National Human Rights Consultation Report*, Attorney-General's Department (2009) p xxix. At [http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report\\_NationalHumanRightsConsultationReportDownloads](http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report_NationalHumanRightsConsultationReportDownloads) (viewed 13 September 2010).

113 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), pp 252-254.

114 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), pp 261-263.



The 1967 referendum evidenced the importance of ensuring that the Yes argument is clear and concise. Despite the technical nature of the amendments, it was the clarity of message that mobilised the Australian population in record numbers to vote yes. There is an inherent tension at play between a clear articulation of the precise legal effect of the referendum and the need for a simple and concise message to garner majority support.

(ii) *The 1999 referendum*

The 1999 referendum witnessed the establishment of a ‘neutral campaign’ as well as the ‘Yes’ and ‘No’ Committees. The *Referendum (Machinery Provision) Act 1984* (Cth) was amended to allow for the ‘Yes’ and ‘No’ Committees to be allocated campaign funds of \$7.5 million each and the ‘neutral’ campaign was allocated a further \$4.5 million.<sup>115</sup>

The 39 page ‘Yes/No’ booklet published by the Australian Electoral Commission became the main source of information during the formal campaign.

The information provided in the booklet was drafted by the corresponding members of Parliament who either supported or opposed the amendments. As a consequence, the booklet presented information to the public in a largely polarised manner. This did not necessarily assist in increasing the public’s understanding of the issues in a clear and coherent manner.

**Text Box 2.7: The ‘Yes/No’ booklet for the 1999 referendum**

The ‘Yes/No’ booklet for the insertion of a new preamble noted the following reasons in support of the preamble.

In summary, a ‘YES’ vote on the preamble for our Constitution would:

- enable the Australian people to highlight the values and aspirations which unite us in support of our Constitution
- contribute importantly to the process of national reconciliation between indigenous and non-indigenous Australians
- recognise at the end of our first century of federation the enduring priorities and influences that uniquely shape Australia’s sense of nationhood.<sup>116</sup>

In contrast the reasons for opposing the insertion of a new preamble provided in the pamphlet included:

- It’s Premature – it is absurd to introduce a new Preamble until we know whether Australia will become a Republic.
- It’s a Rush Job – we should not be tacking these words onto our Constitution without more work and much more public consultation.
- It’s a Politicians’ Preamble – the people haven’t had a say on what should be included in their Preamble.
- It’s Part of a Political Game – while the Labor Party voted against the Preamble in Parliament, they will not campaign against it.

115 G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 64, 66.

116 Australian Electoral Commission, *Public Information Campaign*, [http://www.aec.gov.au/Elections/referendums/1999\\_Referendum\\_Reports\\_Statistics/Public\\_Information\\_Campaign.htm](http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/Public_Information_Campaign.htm) (viewed 13 September 2010).

- It's a Deliberate Diversion – the Preamble is an unnecessary diversion from the most important issue at stake – the Republic model.
- It's Got Legal Problems – the Preamble referendum question is misleading and there is much debate about what the legal effect of the Preamble will be.
- Its Content is Defective – the proposed Preamble is far more likely to divide rather than unite Australians.<sup>117</sup>

In a review of the machinery of referendums, the Standing Committee on Legal and Constitutional Affairs noted that the 1999 'Yes/No' booklet provided voters with only the minimum information needed to make an informed decision at a referendum. It was necessary to supplement it with more targeted and contextual information. The Committee recommended that for future referendums, a bipartisan Referendum Panel be appointed for the purposes of promoting and educating voters about the proposed arguments.<sup>118</sup>

In addition to the 'Yes/No' booklet, the 1999 referendum campaign included a public education kit for voters.<sup>119</sup> The kit included information on the current system of government, referendum processes, and background information on the referendum questions themselves.<sup>120</sup>

*(iii) Lessons learnt*

The 1999 referendum had an extensive education campaign that was compromised by polarised messaging.

Like the 1967 referendum, I believe a tension between simplicity of messaging and a clear articulation of what will be the effect of the referendum will arise in the lead-up to the proposed referendum. This tension will need to be discussed, managed and resolved prior to the official launch of the future campaign.

The proposed constitutional amendments should be:

- targeted and accessible
- readily translated into plain English (and other languages)
- able to garner the widespread level of support to be successful.

The public education campaign accompanying a referendum necessarily needs to be broad enough to be a component of the process from its very inception and should extend to the development and drafting of the proposals. All consultation on a proposed referendum topic needs to:

---

117 Australian Electoral Commission, *Public Information Campaign*, [http://www.aec.gov.au/Elections/referendums/1999\\_Referendum\\_Reports\\_Statistics/Public\\_Information\\_Campaign.htm](http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/Public_Information_Campaign.htm) (viewed 13 September 2010).

118 House Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *A Time for Change: Yes/No?: Report on the Inquiry into the machinery of referendums* (2009), p 61. At <http://www.aph.gov.au/house/committee/laca/referendums/report.htm> (viewed 13 September 2010).

119 In the 1999 referendum the Australian Electoral Commission (AEC) conducted a significant public education campaign, which focused on encouraging enrolment and providing information on the voting services and how to vote formally. The AEC spent \$7.5 million on the public education campaign, which included media coverage through television, radio and print media. The information was translated into ethnic and Indigenous languages, as well as provided in Braille and large print. The AEC also ran a phone service for people to ask questions about the referendum: See G Williams and D Hume, *People Power: The History and Future of the Referendum in Australia* (2010), p 68.

120 House Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *A Time for Change: Yes/No?: Report on the Inquiry into the machinery of referendums* (2009). At <http://www.aph.gov.au/house/committee/laca/referendums/report.htm> (viewed 13 September 2010).

- include a public education component
- explain the Constitution
- explain the legal and political system of Australia
- explain the process of referendums
- explain the impact proposed reforms will have on peoples rights
- identify and address any other specific issue/s at hand.

It is essential that public education campaigns are accessible and appropriate for all elements of the Australian public, in particular, marginalised groups who may not ordinarily have access to such information, or be able to participate in mainstream democratic processes. Information may need to be targeted for specific groups such as Indigenous peoples, women, children and youth, elderly people, culturally and linguistically diverse groups, and people with disabilities. Internet and social networking sites could be utilised to expand the reach and access of the information. Informing any referendum process with a comprehensive and proper public education program is vital to ensuring that the participation of all Australians, and particularly Aboriginal and Torres Strait Islander peoples, comes from an informed perspective.

**(d) Ensuring a successful referendum strategy**

The success of the 1967 referendum reflects over 30 years of advocacy resulting in a clear and concise message calling for reform. It also reflects the high level of Aboriginal and Torres Strait Islander and non-Indigenous involvement in the process leading up to the referendum in 1967.

In contrast, the failure of the 1999 referendum reflects a process that resulted in confused and complicated messaging. It also reflects the fact that despite extensive consultative processes early on in the campaign, the lack of engagement by Aboriginal and Torres Strait Islander people and the broader Australian community in the development of the reform proposal fostered a politicised process and ultimately an unsuccessful result.

The lessons learnt from these and other referendums provide significant guidance for developing a successful referendum strategy.

We must learn from past successes and mistakes if we are to progress the proposed referendum to a successful outcome.

The Australian Government has committed to progress the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution. It is incumbent on the Australian Government to ensure that adequate resources are committed to engage the public in the reform process. It is now time to harness the bipartisan support for change, and truly make this a process of the people.

*(i) Expert Panel on Constitutional Recognition of Indigenous Australians*

As this Report was being finalised the Australian Government established an Expert Panel on Constitutional Recognition of Indigenous Australians (Expert Panel).

The Expert Panel will report to the Australian Government on potential options for constitutional recognition of Aboriginal and Torres Strait Islander peoples, and will advise on the level of support for these options by December 2011.<sup>121</sup> The Terms of Reference are set out in Text Box 2.8 below.

---

<sup>121</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Expert Panel Terms of Reference* (2010). At <http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/ExpertPanel.aspx> (viewed 12 January 2011).

**Text Box 2.8: Expert Panel on Constitutional Recognition of Indigenous Australians: Terms of Reference<sup>122</sup>**

In performing [its] role, the Expert Panel will:

- lead a broad national consultation and community engagement program to seek the views of a wide spectrum of the community, including from those who live in rural and regional areas;
- work closely with organisations, such as the Australian Human Rights Commission, the National Congress of Australia's First Peoples and Reconciliation Australia who have existing expertise and engagement in relation to the issue and
- raise awareness about the importance of Indigenous constitutional recognition including by identifying and supporting ambassadors who will generate broad public awareness and discussion.

In performing this role, the Expert Panel will have regard to:

- key issues raised by the community in relation to Indigenous constitutional recognition
- the form of constitutional change and approach to a referendum likely to obtain widespread support
- the implications of any proposed changes to the Constitution and
- advice from constitutional law experts.

The Expert Panel will be central to ensuring that the journey to achieve a successful referendum is community-led – by both Aboriginal and Torres Strait Islander people, and non-Indigenous Australians. To better reflect this, I am of the view that the name of the Expert Panel should be changed to the ‘Consultative Committee on Constitutional Recognition of Indigenous Australians’.

The Expert Panel is made up of Indigenous and community leaders, legal experts and parliamentary members, who bring together a wide range of expertise.<sup>123</sup> I have been appointed as an ex officio member of the Expert Panel in my capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Co-Chairs of the National Congress have also been appointed as ex officio members.

The presence of representatives from the Australian Labor Party, the Australian Greens, the Coalition and an Independent should help ensure that the Expert Panel builds on the early bipartisan support for the reform process. While the Expert Panel contains representatives from across the Parliament, it is heartening to see that it has been structured in a way that minimises perceptions that it is a political body. Only four of the 20 members are parliamentarians.

To strengthen the role of the Expert Panel, I consider that it should be empowered to make recommendations for reform based on the results of the consultation process and its research findings. It should not simply be tasked with suggesting options.

122 Department of Families, Housing, Community Services and Indigenous Affairs, *Expert Panel Terms of Reference* (2010). At <http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/ExpertPanel.aspx> (viewed 12 January 2011).

123 Department of Families, Housing, Community Services and Indigenous Affairs, *Membership of the Expert Panel*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/membership\\_expert\\_panel.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/membership_expert_panel.aspx) (viewed 12 January 2011).

I encourage the Australian Government and the Opposition to make a public commitment to act on the recommendations of the Expert Panel.

I am pleased to have been appointed to the Expert Panel and look forward to being a part of the national conversation with Aboriginal and Torres Strait Islanders and the broader community towards a successful referendum.

Drawing on the analysis of past referendums that I outline earlier in this Chapter, I offer the following observations about issues that could be considered as the Expert Panel begins to frame its approach.

*(ii) Advice and outreach to complement the work of the Expert Panel*

In order for a referendum to succeed, it is critical that the reform options are sound and that they resonate with the wider Australian community.

To assist developing these options and to meet its Terms of Reference, the Expert Panel could be complemented by advice and assistance regarding:

- leadership and engagement
- ambassadorial outreach
- technical issues.

**Leadership and engagement**

Independent advice and assessment of the options under consideration by the Expert Panel would strengthen the work of the Expert Panel and would assist in the design of meaningful and effective consultation mechanisms.

Advice could be provided by representatives of:

- national peak Aboriginal and Torres Strait Islander organisations
- Indigenous and non-Indigenous statutory office holders
- peak business and industry groups
- faith-based organisations
- major non-governmental organisations such as ANTaR, Oxfam Australia, Amnesty International Australia and Reconciliation Australia
- the Australian Council of Trade Unions.

Too often, consultation processes are imposed upon Aboriginal and Torres Strait Islander peoples. To enhance the legitimacy of the constitutional reform process, and in line with the Declaration, Aboriginal and Torres Strait Islander peoples need to be involved in the design and implementation of the consultation process from the earliest stage. These organisations would have a fundamental role to play in this regard.

The Expert Panel could work with these organisations, harnessing their advice flexibly and responsively to reach the widest possible range of people. For instance:

- peak bodies may be able to conduct devolved consultations or conduct surveys, with the results fed up to the Expert Panel
- peak bodies may identify ‘local champions’ that can assist to facilitate consultations in communities (but not necessarily act as representatives of the community)
- communities may wish to make their views known through existing structures, networks or events, such as at land council meetings
- communities may wish to participate in more traditional workshops or sessions run by the Expert Panel.

There is also a need to ensure that the wider Australian community is able to be part of the journey. These organisations could help ensure that a diverse range of community groups are engaged in the consultation process.

They could commit to publicising the reform process through their networks, and to facilitate the participation of their stakeholders and members.

These organisations may also be able to provide frank, high-level advice to inform and test options under consideration by the Expert Panel. In particular, they may be able to provide advice on how the options would be received by their membership, constituents and supporters.

### **Ambassadorial outreach**

The Australian Government has charged the Expert Panel with raising awareness of the importance of constitutional recognition 'including by identifying and supporting ambassadors who will generate broad public awareness and discussion'.<sup>124</sup>

The Expert Panel has 12 months to conduct its consultations. There is a risk that public enthusiasm for constitutional reform and media attention may wane over this time.

High-profile ambassadors can play a role in keeping the constitutional reform process in the public spotlight, to educate the wider community, and to promote popular ownership of the process.

They will be critical to raising and maintaining the profile of the consultation and reform process, including by:

- delivering public addresses
- engaging with the media
- participating in education and advertising campaigns.

The ambassadors should come from a diverse range of backgrounds, including for example:

- prominent Aboriginal and Torres Strait Islander leaders
- leaders of faith-based groups
- prominent non-Indigenous figures, such as former politicians, judges and Australians of the Year
- artists
- sporting identities
- television personalities.

### **Technical advice**

Any reform proposal recommended by the Expert Panel will need to be legally sound and able to be implemented.

Constitutional experts have been appointed to the Expert Panel.<sup>125</sup> However, the Expert Panel would benefit from the advice of a wider range of people with policy,

---

124 Department of Families, Housing, Communities Services and Indigenous Affairs, *The Role of the Expert Panel* (2010). At [http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/Role\\_Expert\\_Panel.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/Role_Expert_Panel.aspx) (viewed 12 November 2010).

125 Department of Families, Housing, Community Services and Indigenous Affairs, *Membership of the Expert Panel*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/membership\\_expert\\_panel.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/membership_expert_panel.aspx) (viewed 12 January 2011).

legal and constitutional expertise. Such experts could include Aboriginal and Torres Strait Islander and non-Indigenous constitutional law scholars and lawyers.

These experts could provide independent, expert advice and assist the Expert Panel to test the options for reform that have been suggested during the consultations and assist in framing recommendations.

*(iii) Engagement with the Australian community*

In addition to consulting about options for constitutional reform, the Expert Panel must be resourced to conduct public education. The fundamental importance of education campaigns has been highlighted earlier in this Chapter.

The consultation process represents an opportunity to educate the wider Australian community about the Constitution, the human rights of Aboriginal and Torres Strait Islander peoples and the importance of recognising Aboriginal and Torres Strait Islander peoples in the Constitution. This process itself could build relationships and promote reconciliation. The ambassadors, as discussed above, will have an important role to play in public education activities.

*(iv) The role of the Australian Government*

The Australian Government is well placed to resource, facilitate and enable a referendum strategy that meets the above criteria and ensures the best possible outcome for Aboriginal and Torres Strait Islander peoples, the broader Australian population and the nation.

## 2.5 Conclusion

In this Chapter, I have addressed three key questions:

- Why is there a need for constitutional reform to recognise Aboriginal and Torres Strait Islander peoples and our rights?
- What could reform look like?
- What are the next steps?

I have outlined a possible process for achieving a successful referendum, building on lessons learnt from previous referendums. This analysis shows that bipartisan support and effective engagement, involving active participation and education, with Aboriginal and Torres Strait Islander peoples and the broader Australian public are essential ingredients for success.

In conclusion I want to return to what this process, the recognition of Aboriginal and Torres Strait Islander peoples in the foundational legal document, is all about. At its core it is about nation-building. Building a nation based on respect for the dignity and humanity of the first peoples of this land is something for all Australians to strive for.

Pat Dodson suggests the nation needs to be bold, have leadership and courage for the constitutional reform process to advance the journey towards reconciliation:

If we face our history with courage, and if we pledge the integrity of our improving relationship firmly within our Constitution, then a real dialogue between us can proceed secure in the knowledge of our *shared* commitment to the nation and its future. Not incidentally, we can also address the task of ensuring that education, economic and health outcomes for Indigenous people reach parity with all other Australians

... If, as a nation, we are able to conduct ourselves with courage, love and integrity in the dialogue before us, then the nation will be well served and future generations will

not be left wondering why our courage was so lacking that we were unable to confront the truth of our history and to deal with that truth accordingly.<sup>126</sup>

Opportunities for nation-building are rare moments in time when we, the people rather than elected representatives, direct the transformation of the nation and its identity.

The National Apology was a poignant moment for this nation. Yes, it was a moment of reflection on past wrongs. But it was also much more than that. The National Apology was a transformative moment where the Parliament of Australia set about building a future for the nation, that has reconciled with its past and is ready to move forward, walking with its first peoples.

My predecessor Tom Calma, had the honour of giving the formal response to Parliament on behalf of the Stolen Generations and their families:

It's the day our leaders – across the political spectrum – have chosen dignity, hope and respect as the guiding principles for the relationship with our first nations' peoples. Through 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.

...

This is not about black armbands and guilt. It never was. It is about belonging. The introductory words of the 1997 *Bringing them home* report remind us of this. It reads:

*...the past is very much with us today, in the continuing devastation of the lives of Indigenous Australians. That devastation cannot be addressed unless the whole community listens with an open heart and mind to the stories of what has happened in the past and, having listened and understood, commits itself to reconciliation.*

By acknowledging and paying respect, Parliament has now laid the foundations for healing to take place and for a reconciled Australia in which everyone belongs.

...

Let your healing, and the healing of the nation, begin.<sup>127</sup>

The National Apology marked an opportunity for Parliament to acknowledge the past and build towards a reconciled future in Australia.

I believe the current opportunity for constitutional reform to recognise Aboriginal and Torres Strait Islander peoples as part of this nation, offers the Australian population this same opportunity.

I believe Australians are ready to confront the past and to move forward towards a reconciled nation.

The nation needs to be open and honest and ask the hard questions. Does the nation want to live under a Constitution which permits and anticipates actions that are racially discriminatory? After all, this is the document the current Chief Justice has said defines the extent of Australia's legal universe.<sup>128</sup>

---

126 P Dodson, *Can Australia Afford Not to be Reconciled* (Speech delivered at the National Indigenous Policy and Dialogue Conference, UNSW, Sydney 19 November 2010), pp 3, 11. At [http://ipdru.arts.unsw.edu.au/media/File/Dodson\\_keynote.rtf](http://ipdru.arts.unsw.edu.au/media/File/Dodson_keynote.rtf) (viewed 24 November 2010).

127 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Let the healing begin* (Speech delivered in response to the National Apology, 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 8 October 2010).

128 The Hon Chief Justice R French, *Theories of Everything and Constitutional Interpretation* (Speech delivered at Gilbert & Tobin Centre of Public Law, UNSW, 2010 Constitutional Law Conference Dinner, Sydney, 19 February 2010), p 4. At [http://www.gtcentre.unsw.edu.au/publications/papers/docs/2010/644\\_RobertFrench.pdf](http://www.gtcentre.unsw.edu.au/publications/papers/docs/2010/644_RobertFrench.pdf) (viewed 28 September 2010).



I believe an informed and engaged Australian population will not accept that racial discrimination should be permitted anywhere near its legal universe. I believe Australians are ready to vote yes for change.

In contemplating the enormity of the task, I am heartened by the fact that much of the work to inform Australians about the history of exclusion of Aboriginal and Torres Strait Islanders in this country has been done over the past 60 years. The campaigns that led up to the 1967 referendum and the significant efforts since have laid a solid foundation on which to build.

This will be a long hard journey. But it's the journey that will mark the maturity of the nation, not just the destination – as important as that will be.

The opportunity to actively participate in an act of nation-building and true reconciliation is rare and should be cherished. This is an opportunity that I believe will be seized by the people of Australia.

### Recommendations

- 2.1 That all Australian political parties commit to and participate in the constitutional reform process in good faith to progress recognition of the unique place and the rights of Aboriginal and Torres Strait Islander peoples.
- 2.2 That the Australian Government place constitutional reform on the Council of Australian Governments agenda as a national policy.
- 2.3 That the Australian Government establishes and fully resources a formal process to guide progress towards a referendum that:
  - Includes a commitment to:
    - improve the lives of Aboriginal and Torres Strait Islander peoples
    - ensure the adequate protection of human rights for all Australians
    - ensure a solid foundation upon which to build a reconciled nation.
  - Seeks to achieve and maintain bipartisan support, and has a strong focus on public education and facilitating popular ownership of the issues.
  - Includes a strategy that facilitates engagement with Aboriginal and Torres Strait Islander peoples and the broader Australian community.
- 2.4 That the Australian Government adequately resource the provision of advice and assistance to the Expert Panel on Constitutional Recognition of Indigenous Australians including in relation to leadership and engagement, ambassadorial outreach, and technical advice.



# Chapter 3:

## From community crisis to community control in the Fitzroy Valley

.....

### 3.1 Community-led alcohol restrictions in the Fitzroy Valley

It is a story of colonisation; the threat of losing our cultural authority to manage our societies; and the despair that has come from that disempowerment. It is a story of grief and trauma and the continued pain of living with grog, drug and violence.

It is a story that academics and journalists write about us as though we are victims of history that we can do nothing about. And within their stories about us is an acceptance that the paternal hand of government will determine the nature of our welfare and even the nature of our rights.

... I want to tell a different story. It is about how Aboriginal people can be the authors of our stories and not passive and powerless subjects in stories told and written by others.

... I want to talk about how the leaders of the Fitzroy Valley in the Kimberley are working together to create a pathway of hope and community vitality and resilience... if our journey of social reconstruction could be measured as a one kilometre track, we have only travelled the first metre.

The start of the journey has depended on the leadership of the Aboriginal community but the journey from this point on will largely be shaped by a partnership that we can create and build with governments.<sup>1</sup>

This Chapter is about the courageous steps that the communities of Fitzroy Valley took to address the problem of alcohol abuse and its impacts on the most vulnerable members of the community. Over the course of three years, the residents of the Fitzroy Valley have led transformative change in their region and lifted their communities out of chaos and despair. This Chapter outlines the process of moving from community crisis to community control.

In 2007, a number of Fitzroy Valley community leaders decided it was time to address increasing violence and dysfunction in their communities. Alcohol abuse was rife across the Valley – and rather than healing the pain of colonisation and disempowerment, it was causing violence, depression and anguish amongst residents. By 2007, there had been 13 suicides in the Valley over a 12 month period.

---

1 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), pp 1-2. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.ashx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.ashx) (viewed 15 September 2010).

The actions of these leaders were careful and modest; aimed at bringing the Fitzroy Valley residents with them on a journey to understand two things, that the alcohol situation was dire, and that the problems of the Valley could be reversed. I first examine the processes in which key community leaders took steps to restrict alcohol in the Valley. I then outline the development of a local governance structure that facilitates effective engagement between the communities and government. This structure is a platform for local voices to influence the future of the Fitzroy Valley.

This Chapter also looks at a community-driven research project addressing Fetal Alcohol Spectrum Disorders (FASD) in the Valley. The community-led nature of this project, which has consent processes embedded into its fabric, and the strategic use of external partners have allowed the communities to address an incredibly sensitive and difficult issue in FASD.

The recent history of the Fitzroy Valley reads as a 'how-to manual' for the development and implementation of a bottom-up project for social change. It is the story of a movement that engages with, rather than further marginalises, the local communities. These events demonstrate approaches to community crisis that encourage and build the positive, willing participation of the affected people.

The principles emerging from the Fitzroy experience can inform the development and delivery of government services across the diversity of Aboriginal and Torres Strait Islander communities throughout Australia. If governments apply these principles they can shift from a service delivery paradigm to become enablers and facilitators of community-based agents of change.

In the Fitzroy Valley, the Australian and Western Australian governments have an opportunity to work with the communities to build on the existing models of governance and communication to capitalise on this social transformation.

### (a) The Fitzroy Valley

For thousands of years there were many different language groups living on this land and we are still here today. The Bunuba and Gooniyandi people are the people of the rivers and the ranges. The Walmajarri and the Wangkatjungka people are the people of the great desert. Today these different language groups all live together in harmony in the Fitzroy Valley. That's what makes this place so special. We have strong culture here and we welcome you to our place and our dreams.<sup>2</sup>

The Fitzroy Valley is in the Kimberley region of Western Australia. The town of Fitzroy Crossing is situated near the centre of the Fitzroy Valley. It is the regional hub of the Valley. Fitzroy Crossing is on the traditional lands of the Bunuba people. There are 44 smaller communities spread around the Valley in a diameter of approximately 200 kms. Of these smaller communities, a number are sub-regional hub communities, while others are smaller satellite communities or outstations.<sup>3</sup>

The area is extremely remote. The nearest major centres are Derby (258 km), Halls Creek (263 km) and Broome (480 km). Of the approximately 4000 people who live in Fitzroy Valley, 1600 live in Fitzroy Crossing. The majority of the population across the Valley is Aboriginal.<sup>4</sup>

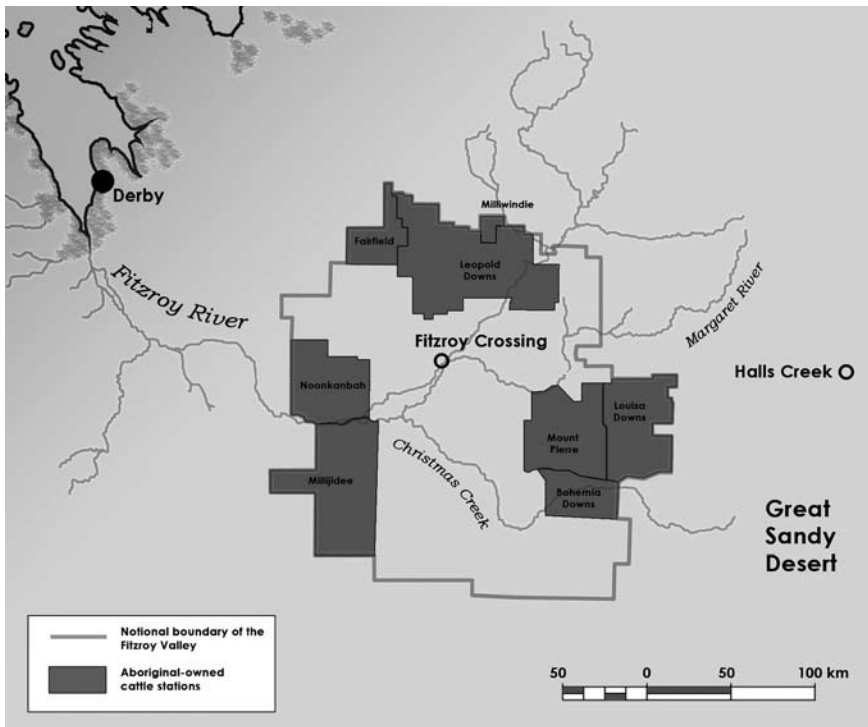
---

2 J Oscar, community member and CEO of Marninwarntikura, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 00:30.

3 For more detail see: F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010). At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

4 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 4.

Map 3.1: The Fitzroy Valley<sup>5</sup>



The Fitzroy Valley is serviced by a range of different providers; government departments and agencies, as well as non-governmental organisations. Government services include education, police, health and child protection. Local non-governmental organisations provide a range of cultural and social welfare services. For example, the Marninwarntikura Women’s Resource Centre (Marninwarntikura) provides domestic violence services, and the Kimberley Aboriginal Law and Culture Centre (KALACC) is the peak body for developing, promoting and maintaining law and culture across the Valley.

**(b) Community crisis**

We worry all the time for this land and our people. Especially when we see and live in the shadows of the painful effects of dispossession, oppression, racism and neglect. And when we see how alcohol is being used to mask this pain in our community and how it creates more pain.<sup>6</sup>

In 2007, the communities of the Fitzroy Valley were in crisis. The Fitzroy Crossing Hospital staff described the abuse of alcohol in the communities as ‘chronic, chaotic

5 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010), p 10. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010). Based on The Kimberley Pastoral and General Land Use Map, Kimberley Development Commission.

6 J Oscar, community member and CEO of Marninwarntikura, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 02:18.

and violent' – it was common for them to treat between 30 and 40 people a night for alcohol related injuries.<sup>7</sup>

Too many people were dying. Community member, Joe Ross, suggested that 'the community had become immune to attending funerals'.<sup>8</sup> The Fitzroy Valley had 55 funerals in one year, of which 13 were suicides. If this rate of suicide was applied to a population the size of Perth it would equate to 500 suicides per month.<sup>9</sup> These astounding figures prompted local community leaders to call for an inquest by the State Coroner of Western Australia, Alistair Hope. In 2008, the Coroner handed down his findings on 22 self-harm deaths in the Kimberley region. The Coroner found that the Kimberley region saw a 100% increase in self-harm deaths from 2005 to 2006, and the numbers of self-harm deaths in the Fitzroy Valley were exceptionally high.<sup>10</sup> A 'striking feature' of the Coroner's findings was the 'very high correlation between death by self-harm and alcohol and cannabis use'.<sup>11</sup>

We had a community that was just being decimated by alcohol abuse. Children weren't feeling safe about going home. Old people running to a safe place. Old people crying, wanting to move out of their homes because, you know, they were just being harassed by family members who was coming home drunk.<sup>12</sup>

The Coronial Inquest into 22 deaths in the Kimberley, also found that the Aboriginal people in the Kimberley region had a real desire for change and that they wanted to play an active role in designing and developing programs to improve their living conditions.<sup>13</sup>

The abuse of alcohol in the Valley has historical roots that can be linked to the processes of colonisation and the accompanying social policies that alienated and marginalised the Aboriginal people of the region.

---

7 S Kinnane, F Farringdon, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 24. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

8 J Ross, community member, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 31 July 2010.

9 M White, *Community-Owned Approaches to Social Recovery – Overcoming Despair in the Fitzroy Valley: Service Analysis of the determinants necessary for a good life well lived*, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Warra Warra Aboriginal Corporation, Nindilingarri Cultural Health, Kimberley Aboriginal Law and Cultural Centre (2009), p 12. At [http://www.aph.gov.au/senate/committee/clac\\_ctte/suicide/submissions/sub120.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/suicide/submissions/sub120.pdf) (viewed 25 August 2010).

10 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), executive summary.

11 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 5.

12 E Carter, community member and Chair of Marninwarntikura, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 02:53.

13 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 57.

**Text Box 3.1: History, trauma and alcohol abuse<sup>14</sup>**

After the period of frontier violence in the late nineteenth and early twentieth century Aboriginal people worked on stations for little or no wages. For decades Aboriginal people were the backbone of the industry. Without the Aboriginal women and men who sheared the sheep, mustered the cattle, built the fences and windmills and cooked the food, the pastoral industry would not have been able to operate.

Then in the late 1960s and early 1970s when the equal wage decision for Aboriginal stock workers was implemented in the Kimberley, our people were discarded. We were treated with contempt and expelled on mass from the stations.

Aboriginal people throughout the valley resettled in congested, squalid conditions. In the early 1970s the population of Fitzroy Crossing rose from 100 to over 2000 people within two years. It became a tent-camp of refugees fleeing a humanitarian disaster....

Like many such people alienated from their lands, alcohol abuse started and it got worse and worse over the years. At first only the older men and middle aged men drank, then some of the young men and then more and more women and then teenagers, some of them quite young.

The grog has affected every single person in the valley at one level or another. Aboriginal people in the valley have identified grog as the most important health priority that must be confronted.

Fitzroy Valley residents had been cognisant of the damage that alcohol was causing for some time and they had taken steps to address the problem. For example, in 2004, 300 residents from the Valley met to discuss the issues of alcohol and drug abuse. The attendees of the meeting agreed that there was a need to focus on counselling and treatment.<sup>15</sup> However very few resources were available, and little was done to address what was an overwhelming problem.

In 2007, in the face of this ongoing and escalating crisis, the senior women in the Fitzroy Valley decided to discuss the alcohol issue and look for solutions at their Annual Women's Bush Meeting. The Women's Bush Meeting is auspiced by Marninwarntikura; it is a forum for the women from the four language groups across the Valley. At the 2007 Bush Meeting, discussions about alcohol were led by June Oscar and Emily Carter from Marninwarntikura. The women in attendance agreed it was time to make a stand and take steps to tackle the problem of alcohol in the Fitzroy Valley.<sup>16</sup> While the women did not represent the whole of the Valley, there was a significant section of the community in attendance. Their agreement to take action on alcohol was a starting point and it gave Marninwarntikura a mandate to launch a campaign to restrict the sale of alcohol from the take-away outlet in the Fitzroy Valley. The community-generated nature of this campaign has been fundamental to its ongoing success. The communities themselves were ready for change.

14 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at WA Women's Advisory Council Conference, Perth, 14 June 2010), p 7.

15 E Carter, community member and Chair of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

16 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 4.

**(c) Alcohol restrictions campaign**

The community is at a stage where they're wanting to do something, so, you know, the State and Federal Government, they should really listen and that we're a community that wants to meet them halfway, and isn't that a good thing, where it's not coming from the top down?<sup>17</sup>

[The campaign] started from [the Marninwarntikura] Women's Bush Meeting in Gooniyandi Country. It was the old people who really stood up to put a stop to grog. Old people didn't get sleep and children at night were running around. This is how it started.<sup>18</sup>

Following this bush camp, on 19 July 2007 Marninwarntikura wrote to the Director of Liquor Licensing (Western Australia) seeking an initial 12 month moratorium on the sale of take-away liquor across the Fitzroy Valley.<sup>19</sup> The only take-away outlet in the Valley is located in Fitzroy Crossing. As a consequence, much of the focus of the campaign for alcohol restrictions was on Fitzroy Crossing, although its effects would apply across the Valley region.

Marninwarntikura argued that alcohol restrictions were necessary for the following reasons:

- the high number of alcohol and drug related suicides in the Fitzroy Valley
- the communities were in a constant state of despair and grief
- there was extensive family violence and the women's refuge was unable to cope with the demand from women seeking refuge from violence at home
- childhood drinking was becoming normalised behaviour
- local outpatient presentations from alcohol abuse were unacceptably high
- local hospital statistics suggested 85% of trauma patients were alcohol affected and 56% of all patients admitted were under the influence of alcohol
- criminal justice statistics showed a disproportionately high number of alcohol related incidents
- local employers were finding it difficult to retain staff as a result of alcohol consumption
- a reduction in school attendance
- child protection issues including a significant number of children under the age of five exhibiting symptoms associated with Fetal Alcohol Syndrome.<sup>20</sup>

---

17 E Carter, community member and Chair of Marninwarntikura, interviewed on Australian Broadcasting Corporation, *The 7:30 Report, Coroner to investigate deaths in Fitzroy Crossing* (Broadcast 13 October 2007). At <http://www.abc.net.au/7.30/content/2007/s2049936.htm> (viewed 27 April 2010).

18 Unidentified service provider interviewed for the 12 month review of the alcohol restrictions in the Fitzroy Valley: S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 57. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

19 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 1. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

20 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 3. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).



Marninwarntikura called on the Director of Liquor Licensing to restrict access to take-away alcohol purchased in Fitzroy Crossing in order to provide some respite for the communities and to allow time to address the 'deplorable social situation' in the Fitzroy Valley.<sup>21</sup>

During this process, Marninwarntikura liaised with the cultural leadership of the communities through KALACC; one of the three Kimberley-wide Aboriginal organisations which promotes law and culture for the different language groups in the region. KALACC gave its support to the restrictions campaign. The CEO of Marninwarntikura noted the importance of this support from the cultural leadership:

It was really important to let elders know what was happening. We liaised with cultural leaders and elders through KALACC. KALACC helped facilitate approval from elders for the alcohol restrictions.<sup>22</sup>

The role of KALACC was critical, it would have been very interesting had they not supported the campaign. The support of KALACC managed some of the forces in the community.<sup>23</sup>

The cultural leadership gave the campaign their support because they believed in the positive possibilities that alcohol restrictions might offer Fitzroy Valley residents. One cultural leader described the campaign, saying:

I reckon because woman is the mother, you know, and that's why mother feel the pain. Something got to be changed and that's what I was hoping to have that in my mind to support [the restrictions]. I reckon that's a good thing woman did.<sup>24</sup>

The support of the elders and cultural leadership cannot be underestimated. It was a factor that influenced the discretion of the Director of Liquor Licensing to issue the alcohol restrictions.<sup>25</sup> The support from elders gave the campaign the necessary legitimacy to withstand some strongly-held views by sectors of the communities which were against the restrictions.

Support for the restrictions was not isolated to the women and the cultural leadership of the Valley. Many of the men from the Valley were strong advocates for the restrictions campaign. The women indicated that 'we couldn't have done it without the men'.<sup>26</sup> However, this campaign was not about gender difference, it was about these communities striving for a better future.

... and this must be understood – what we have achieved so far [in the Fitzroy Valley] could never have been done by government acting alone. The leadership had to come from the community. We had to OWN our problems and create pathways for recovery.<sup>27</sup>

---

21 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 3. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

22 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

23 J Oscar, community member and CEO of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

24 J Brown, community elder and cultural leader, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 05:26.

25 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 4. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

26 J Oscar, community member and CEO of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

27 J Oscar, community member and CEO of Marninwarntikura, *The Fitzroy Valley – To Dream the Gift of a Better Life* (Speech delivered at Parliament House, Canberra, 18 August 2009), p 4.

A Strategic partnership was formed with the Western Australian Police, who also supported the campaign. This strategic alliance bolstered the campaign but did not detract from its community controlled nature.

Despite obtaining significant community-level support for the campaign, there remained strong voices in the communities who opposed the proposed restrictions. However, those supporting the restrictions stood firm knowing that they would buy the Valley some necessary respite from the trauma and chaos of excessive alcohol misuse. The strength of these leaders was decisive, and the campaign came at significant personal cost for some key leaders.

### (i) *Alcohol restrictions in the Valley*

It was September 2007, when the Western Australia Director of Liquor Licensing decided that the sale of take-away liquor was a major contributor to high levels of alcohol-related harm at Fitzroy Crossing. The Director deemed the harm sufficient to justify the imposition of a 6 month trial during which the sale of take-away liquor from the outlet in Fitzroy Crossing would be restricted. The trial commenced on 2 October 2007.

The sale of packaged liquor, exceeding a concentration of ethanol in liquor of 2.7 per cent at 20°C, is prohibited to any person, other than a [person residing, whether casually or permanently, on the premises].<sup>28</sup>

The trial conditions stipulated that only low-strength beer could be purchased from the take-away outlet in Fitzroy Crossing. Full-strength beer, wine and spirits could not be purchased for take-away. These heavier drinks could still be purchased from the two licensed premises in the Valley (both located in Fitzroy Crossing) but they could only be consumed on the premises during opening hours.

Approximately eight months after the restrictions came into force, a review was conducted to assess their impact and to determine their future. The review meeting included the Director of Liquor Licensing and was attended by various members of the Aboriginal communities in the Valley. June Oscar, the CEO of Marninwarntikura, stated that the meeting was the 'most important 30 mins of our lives'.<sup>29</sup> It gave community members the opportunity to present their case to the Director of Liquor Licensing. Their views were summarised as follows:

- the women were more empowered, confident and able to speak up and be involved in community-level discussions
- sly grogging was a real problem
- Fitzroy Valley was much quieter and safer
- other Aboriginal communities were looking to the positive example in the Fitzroy Valley
- the restrictions have seen government agencies and non-government organisations become more involved in the communities
- there was a strong desire not to return to the pre-restriction chaos
- substantial and lasting change is needed

---

28 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 9. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

29 Quoted in Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 187548* (2008), p 14. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/A187548.pdf> (viewed 25 August 2010).

- children need to be the priority and the next generation of children need to grow up without the problems of alcohol
- families are stronger and sober, old people are being cared for, young people are thinking about owning homes and children are learning skills
- communities with people affected by FASD need assistance
- 'if we return to the past, all hope will be stripped away'.<sup>30</sup>

After the review meeting in May 2008, the Director of Liquor Licensing extended the restrictions on take-away alcohol indefinitely.<sup>31</sup> Since the implementation of the restrictions, four of the communities in the Fitzroy Valley, Wangkatjungka, Noonkanbah, Yakanarra and Bayulu, have also adopted alcohol restrictions, that prevent the possession and consumption of alcohol in these communities.<sup>32</sup>

#### (d) Issues of consent

We dealt with dissenting voices by trying to keep all people in the Valley informed. We used media to help keep people informed and to combat misinformation. I agreed to attend all meetings with dissenting voices in the community but only if the meetings were respectful and outcomes could be generated from meetings.<sup>33</sup>

The Fitzroy Futures Forum was a public place for the community to discuss the restrictions. This was space for people to argue for and against the restrictions...<sup>34</sup>

From the beginning of the campaign it was clear that consensus support for the restrictions could not be reached. While there was a critical mass of people in favour of the restrictions, there was also a cohort which was against them. The lack of consensus was a significant challenge for community leaders who wanted to address this crisis. It also raised a significant human rights issue.

International law has evolved to the point where it is necessary to engage in genuine consultation with Indigenous peoples before adopting policies, laws, decisions or programs that are directly targeted toward us.<sup>35</sup> This consultation should be guided by the principle of free, prior and informed consent.

The principle of free, prior, and informed consent requires that consent should be sought without coercion or intimidation in advance of any authorisation or commencement of activities. All relevant information should be provided and be in a format that is understood by the affected Indigenous people. It is necessary to establish productive dialogue between the affected Indigenous peoples and decision-makers, allowing the time to find mutually acceptable solutions. The process for achieving free, prior and informed consent will vary depending on the

---

30 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 187548* (2008), p 15. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/A187548.pdf> (viewed 25 August 2010).

31 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 187548* (2008), p 60. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/A187548.pdf> (viewed 25 August 2010).

32 Department of Racing, Gaming and Liquor (WA), *Restrictions in Remote Regions*, <http://www.rgl.wa.gov.au/Default.aspx?Nodetd=92&DocId=113> (viewed 6 August 2010).

33 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

34 R Murphy, community member and Fitzroy Futures Forum Community Consultant, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

35 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 43. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 29 July 2010).

circumstances.<sup>36</sup> Appendix 4 provides a more detailed outline of the principle of free, prior and informed consent.

Issues of consent in the Fitzroy Valley were resolved over time. It was a process rather than a single transactional event. The Fitzroy women wanted to create a 'space for reflection' amongst their community members. They knew that excessive alcohol needed to be taken out of the picture in order for reflection to occur. This would give people the time and opportunity to think about the crisis that had befallen the Valley. It was not possible for the residents to make informed decisions while they were in crisis.

Alcohol restrictions are just a small toe hold into the enormous challenges we face. It is not the answer to our problems. It was never intended to be. Its purpose was always to give us breathing space from the trauma and chaos of death, violence and fear; breathing space to think and plan strategically.<sup>37</sup>

Rather than focusing on obtaining majority support for the restrictions in the first instance, the women acted upon the mandate given to them at the Bush Meeting. Following this the women consulted with KALACC elders, health providers and community leaders and others to obtain support from a significant portion of the residents of the Valley.

Talking about the level of support is not simple and clear cut. I am cautious about giving figures and percentages. I think we should get away from looking at it like that. It is more important to give people all the information and then an opportunity to reflect on the alcohol restrictions and then decide if it is a good thing. Give people time to think and feel and see whether it will have a positive impact on their family. I think we should look at consent by reflecting on the way humans live and think.<sup>38</sup>

Creating a 'space for reflection' is sometimes necessary to assist people to develop their capacity and their knowledge in order to make informed decisions. This idea of capacity has been noted as a crucial component of the principle of free, prior and informed consent by the United Nations Permanent Forum on Indigenous Issues:

[I]mplicit in the principle of Indigenous peoples having a right to free, prior and informed consent is the notion of capacity; Indigenous peoples who lack the requisite capacity would be unable to consent in a free and informed manner. This principle of free, prior and informed consent, combined with the notion of good faith, may therefore be construed as incorporating a duty for States to build Indigenous capacity.<sup>39</sup>

---

36 Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, UN Doc E/C.19/2005/3 (2005), paras 46-48. At [http://www.humanrights.gov.au/social\\_justice/conference/engaging\\_communities/report\\_of\\_the\\_international\\_workshop\\_on\\_fpic.pdf](http://www.humanrights.gov.au/social_justice/conference/engaging_communities/report_of_the_international_workshop_on_fpic.pdf) (viewed 9 August 2010). See also J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 46. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 9 August 2010).

37 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), p 2. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.ashx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.ashx) (viewed 15 September 2010).

38 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

39 Permanent Forum on Indigenous Issues, *A draft guide on the relevant principles contained in the United Nations Declaration on the Rights of Indigenous Peoples, International Labour Organisation Convention No. 169 and International Labour Organisation Convention No. 107 that relate to Indigenous land tenure and management arrangements*, UN Doc E/C.19/2009/CRP.7 (2009), pp 20-21. At [http://www.un.org/esa/socdev/unpfi/documents/E\\_C\\_19\\_2009\\_CRP7\\_en.doc](http://www.un.org/esa/socdev/unpfi/documents/E_C_19_2009_CRP7_en.doc) (viewed 28 May 2010).

Twelve months after the alcohol restrictions commenced, an independent review showed increased community-level support for the restrictions.<sup>40</sup> The increased support shows that a 'space for reflection' and a different lived experience can change community attitudes. This could be described as building community capacity.

The process for implementing alcohol restrictions in the Fitzroy Valley demonstrates some stark contrasts to the implementation of alcohol restrictions and other measures under the Northern Territory Emergency Response (NTER).<sup>41</sup> In many ways, the intended outcomes were to be the same – a reduction in social problems as a result of a reduction in access to alcohol. What is strikingly different between the two approaches is the paths that were taken to achieve the same ends. In the Fitzroy Valley, the decisions were made by the communities at a time chosen by the community leaders.

In the Northern Territory a policy developed in Canberra was imposed by the Australian Government. The most stridently voiced criticisms of the NTER were about the lack of opportunity for the affected people to participate in any decision-making about the policies affecting them:

The single most valuable resource that the NTER has lacked from its inception is the positive, willing participation of the people it was intended to help. The most essential element in moving forward is for government to re-engage with the Aboriginal people of the Northern Territory.<sup>42</sup>

#### (e) The restrictions as a circuit breaker

The ones who drink are a small group, but the impact is devastating. We are the ones who live with the violence, the suicides. It is our children who are born with Fetal Alcohol Spectrum Disorders. We women and children want a future. We want to move on. Restricting alcohol is the circuit breaker we need.<sup>43</sup>

The restrictions were a circuit breaker. They are to give our community respite, to allow us as a community to think and plan about what sort of community we want to live in.<sup>44</sup>

The Drug and Alcohol Office of Western Australia commissioned the University of Notre Dame to independently evaluate the impacts of the alcohol restrictions. This review of the impact of the first 12 months of the restrictions was publicly released in July 2009.

The report, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, provided evidence

---

40 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 6. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

41 For further information see T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2008), ch 3. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 15 September 2010).

42 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), pp 10-11. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

43 Statement by the women in attendance at the Marninwarrtikura Annual Women's Bush Camp, 2009 in J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), pp 6-7.

44 E Carter (community member and Chair of Marninwarrtikura), meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

that the alcohol restrictions were a circuit breaker and had given the residents of the Fitzroy Valley breathing space. It identified an increase in support for the alcohol restrictions from the Fitzroy Valley residents. The report indicated that almost all survey respondents accepted the need for some type of alcohol restrictions and that no one wanted a return to the social conditions prior to their introduction.<sup>45</sup>

The University of Notre Dame evaluation found that the alcohol restrictions were having health and social benefits including:

- reduced severity of domestic violence
- a 23% increase in reporting domestic violence and a 20% increase in reporting alcohol related domestic violence (police and other service providers attribute this to a range of factors including lower tolerance of domestic violence and increased sobriety)
- reduced severity of wounding from general public violence
- a 36% reduction in alcohol-related emergency department presentations, during the busiest period (October to March) this increased to a 42% reduction
- reduced street drinking
- a quieter and cleaner town
- families were more aware of their health and were being proactive in regard to their children's health
- reduced humbug<sup>46</sup> and anti-social behaviour
- reduced stress for service providers leading to increased effectiveness of these services
- generally better care of children and increased recreational activities
- a 91% reduction in the amount of pure alcohol purchased through the takeaway outlet
- a reduction in the amount of alcohol being consumed by Fitzroy Valley residents.<sup>47</sup>

The evaluation also indicated that domestic violence and other anti-social behaviour had not been totally eradicated. However, since the restrictions had come into force there was a lower tolerance for domestic violence.

---

45 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 6. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

46 Defined as the act of harassing an individual for money, cigarettes, a lift, food and generally making a nuisance of oneself: S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 4. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

47 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), pp 6-7, 21, 26, 39. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

**Text Box 3.2: The impacts of the restrictions on the women's shelter<sup>48</sup>**

**Evidence provided to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – *Involvement of Indigenous juveniles and young adults in the criminal justice system.***

**Ms Christine Gray, Manager, Family Support Unit, Marninwarntikura Women's Resource Centre.**

I think we all know that, here in Fitzroy, before the restrictions it was a very different town. I probably do not need to tell you about that again. But since the restrictions we have been looking at the numbers of women who come to our shelter. We saw a decline and then we saw an increase. What we have seen over the last year or so is that there has been an increase in numbers. We attributed that to the fact that women are actually leaving the family situation far sooner. They know when alcohol is coming to town. They see the signs. They know what is going to happen next. They come to the shelter. Initially I thought: 'Oh no! This is not right. The number is going up.' But women have reported to us that they get out very quickly and they bring their children to the shelter. The time that they stay is a lot shorter. In the old days people would stay a lot longer because the alcohol would stay around a lot longer too.

As for the level of injuries, when I first came to Fitzroy the injuries were horrific. I am not saying that they have disappeared, but they have certainly lessened dramatically. That is borne out by evidence from the hospital and the police too. We have seen that happen over the time that the restrictions have been in place. The whole town is a different town, I believe. It looks different; it feels different. It is a much better place for families.

A number of negative impacts have resulted from the restrictions including:

- increased travel to Derby and Broome to obtain alcohol
- increased prevalence of people leaving children in the care of grandparents to drink at the licensed premises in Fitzroy Crossing and to travel to other towns to obtain alcohol
- increased pressure on heavily dependant drinkers and their families who are paying substantially more for alcohol
- reducing but still ongoing divisions within the town about the restrictions
- a general sense that there has not been the expected follow through of targeted government services to deal with the problems of alcohol dependence
- an impact on some local businesses who have seen a downturn in business based on people choosing to shop in other towns (partly) related to obtaining full-strength alcohol.<sup>49</sup>

48 Commonwealth, *Official Committee Hansard: Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (31 March 2010), p 7 (Ms Christine Gray, Marninwarntikura). At <http://www.aph.gov.au/hansard/reps/commtee/R12898.pdf> (viewed 9 August 2010).

49 S Kinnane, F Farringdon, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 7. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

Overall, the Notre Dame study concluded that the benefits generated by the alcohol restrictions outweighed the detriments. It reported that the communities are beginning to stabilise from their chaotic pre-restriction state. This perception has contributed to the increasing support for the restrictions from Fitzroy Valley residents.<sup>50</sup>

However, the alcohol restrictions are not a silver bullet for addressing the social crises in the Fitzroy Valley. Despite the significant reduction in alcohol consumption and alcohol-related violence, the Fitzroy Valley faces an immense task to rebuild the social fabric of the communities.

The grog restrictions were never intended to be a panacea for the enormous social disadvantages we face. What we have to imagine is a long term and permanent healing of the gaping wounds that arise from alcohol abuse and violence. This will require collaboration and cooperation.<sup>51</sup>

### **(f) A circuit breaker is not a silver bullet**

The restrictions in the Fitzroy Valley are a circuit breaker; they have provided the communities with the necessary reprieve from the pre-restrictions chaos to allow time to consider their futures. The Notre Dame Study noted that the gains from the restrictions alone would not be sufficient for the communities to address the ingrained issues associated with alcohol abuse, and ongoing support must build upon these gains:

Significant gaps in support services that are needed to enable the social reconstruction of the Fitzroy Valley continue to hinder the community. There continues to be a state of under-investment in the people of the Fitzroy Valley. This gap requires the resourcing of community based organisations operating at the coal face of community development, cultural health, mental health (counselling), education, community safety (Policing) and training, to build on the window of opportunity that the restriction has created.<sup>52</sup>

I visited the Fitzroy Valley as part of my research for this Chapter. Whilst there, I was informed time and time again that the restrictions alone are not enough to tackle the issues of alcohol and drug abuse in the communities. It was a widespread perception that the initial gains that have been made through the alcohol restrictions could be whittled away unless there is urgent investment into drug and alcohol, mental health and rehabilitation services; as well as investment into culture and cultural health programs in the Valley. These views were consistent with the 24 month review of the impact of the restrictions in the Fitzroy Valley which was released at the time of writing this Chapter.<sup>53</sup>

---

50 S Kinnane, F Farringdon, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), pp 6, 10. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

51 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at WA Women's Advisory Council Conference, Perth, 14 June 2010), p 8.

52 S Kinnane, F Farringdon, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 10. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

53 S Kinnane, F Farringdon, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a two year period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2010), pp 11-15.



The 2007 National Drug Research Institute report, *Restrictions on the Sale and Supply of Alcohol*, reported that community control is an essential factor in effectively restricting alcohol supply in Indigenous communities. It noted that support and resources from relevant government agencies are also crucial in the effective implementation of alcohol restrictions.

In general, restrictions that are *imposed* on communities will be less effective – in both the short and long-term – than those which have community backing and community control. With guidance, communities themselves may be best placed to identify their own problems and needs but should also be encouraged to focus their attention on evidence-based and effective initiatives. The diversity of Indigenous populations in Australia means that community control and support is especially crucial among this group. Support *for* community efforts is also needed, especially from police and liquor licensing authorities, as are adequate infrastructure, human and financial resources – and these are often scarce commodities in rural and remote areas.<sup>54</sup>

There is a need for an immediate and coordinated response to address the collective social trauma that is driving alcohol and drug abuse in the Fitzroy Valley. At the time of writing the Western Australian Government had invested in one drug and alcohol counsellor for the Fitzroy Valley. However, the position has not been filled since February 2010. As a consequence the Valley is only serviced twice a month by two regional mental health workers based in Derby.<sup>55</sup> Without immediate action the advances made in the Fitzroy Valley could be lost.

Despite the absence of a coordinated response to drug and alcohol issues, the communities are supporting themselves through the creation of partnerships and alliances with service deliverers. There have been improvements in relationships with police and created strategic alliances with government agencies such as the Drug and Alcohol Office.<sup>56</sup>

An improved relationship between the police and the communities has been essential for creating safer communities for all residents.

I think what the restrictions have created is an ability for the police to assist the community rather than being driven by law enforcement. We are now supporting the community rather than the other way around. We do it in partnership. We can't do it ourselves. The relationship between the police and the community has gone from strength to strength. I would like to think that the relationship is as strong as it has ever been. There seems to be a trust...<sup>57</sup>

## 3.2 Fitzroy Futures Forum: Local governance and local voices

The Fitzroy Futures Forum is a very interesting phenomenon, it is like nothing else that I have seen in any Aboriginal community. It provides a mechanism for community to hold all three levels of government accountable (local, state and federal). It is unique

---

54 National Drug Research Institute, *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*, National Drug Research Institute, Curtin University (2007), p xvii. At <http://ndri.curtin.edu.au/local/docs/pdf/publications/R207.pdf> (viewed 3 May 2010).

55 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 24 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2010), p 12.

56 J Oscar, community member and CEO of Marninwarntikura, *The Fitzroy Valley – To Dream the Gift of a Better Life* (Speech delivered at Parliament House, Canberra, 18 August 2009), p 4.

57 I Gibson, Senior Sergeant, Officer in Charge Fitzroy Crossing Police Station, telephone interview with Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 16 August 2010.

also because it has members from each language group, the community more widely and all three levels of government.<sup>58</sup>

The Fitzroy Futures Forum was beginning to take shape at the time of the alcohol restrictions campaign, the Governing Committee had not been fully established at that time. The restrictions and Fitzroy Futures Forum were two separate processes.<sup>59</sup>

### (a) Formation and background

In a parallel process to the alcohol restrictions campaign, an innovative governance structure was being established in the Fitzroy Valley. Its role was to facilitate local communication and engagement with governments. It is the Fitzroy Futures Forum. The Fitzroy Futures Forum is an open community forum providing a platform for all residents, including Aboriginal and non-Aboriginal residents, as well as businesses and enterprises of the Fitzroy Valley. Its purpose is to give all Fitzroy Valley stakeholders an opportunity to have a say in the future of the Valley.

The Fitzroy Futures Forum emerged out of a need for town planning in Fitzroy Crossing. In September 2000, the Shire of Derby/West Kimberley held a three day community conference to discuss the future of Fitzroy Crossing and the Valley more broadly. The outcome of this conference, the *Fitzroy Futures 2000 Conference*, was to establish a working group to address three key issues identified by the communities:

1. the need for a town plan to identify future growth of Fitzroy Crossing, the surrounding Aboriginal communities and resolve land tenure issues for the purposes of town planning
2. undertake a process of community consultation regarding the relocation of the power station
3. the development of strategic planning in Fitzroy Crossing on a range of social and economic issues including training, education and health.<sup>60</sup>

A process was commenced to develop a town plan and this became the Fitzroy Futures Plan. The local traditional owners of the Fitzroy Crossing region participated in the development of the plan through their representative body, Bunuba Inc. Negotiations occurred between the Department of Planning and Infrastructure (WA), the Shire of Derby/West Kimberley, and Bunuba Inc.

The town planning process included discussion about major government capital works for the Fitzroy Valley including:

- a new health campus
- upgrading the power station
- a district high school
- housing projects
- a new police station.<sup>61</sup>

As a result of the need for these significant capital works and town planning, local community leaders recognised that it was important for the communities to have a mechanism for ongoing input into the future direction of the Fitzroy Valley. An informal and open community forum, now known as the Fitzroy Futures Forum, was

---

58 F Morphy, Centre for Aboriginal Policy Research, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Canberra, 27 May 2010.

59 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

60 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

61 Fitzroy Futures Forum Governing Committee, *Fitzroy Futures Forum & Fund Background* (2010).

seen as an ideal vehicle for this community engagement. It began in 2000 and has gradually evolved into a partnership between the communities and government. It is best described as a hybrid governance mechanism for participation and engagement between local Aboriginal communities, government and other community people and organisations. Over time members of the Fitzroy Futures Forum have developed trust and effective forms of communication.<sup>62</sup>

A formal partnership agreement with the Western Australian Government was signed in 2007.<sup>63</sup>

The Fitzroy Futures Forum consists of four parts.

- Fitzroy Futures Town Plan
- The Forum
- The Fitzroy Futures Fund
- The Fitzroy Futures Forum Governing Committee.

I will consider each of these in turn.

#### (i) *Fitzroy Futures Town Plan*

The town plan sets out Fitzroy Crossing's land tenure, land release and infrastructure needs. This town planning process was the device that brought people together from across the communities and government agencies. To ensure the Fitzroy Futures Town Plan meets local needs, it is guided by the following principles:

- support lifestyle, cultural and social needs of the communities
- focus future growth on land not subject to flood impacts
- promote environmental protection and sustainable settlements
- provide opportunities for economic growth within the communities
- acknowledge infrastructure limitations and deficiencies.<sup>64</sup>

#### (ii) *The Forum*

Anyone that calls Fitzroy Valley home can be involved in the Forum. Black, white, Aboriginal, non-Aboriginal, community organisations, government, business, whoever has an interest in the Valley.<sup>65</sup>

The Forum is a public space where all people with an interest in the Valley can come to raise and discuss community identified priority issues. The Forum has developed an engagement structure that outlines the relationships between each of the stakeholder groups and how they engage with each other. This is represented below.

---

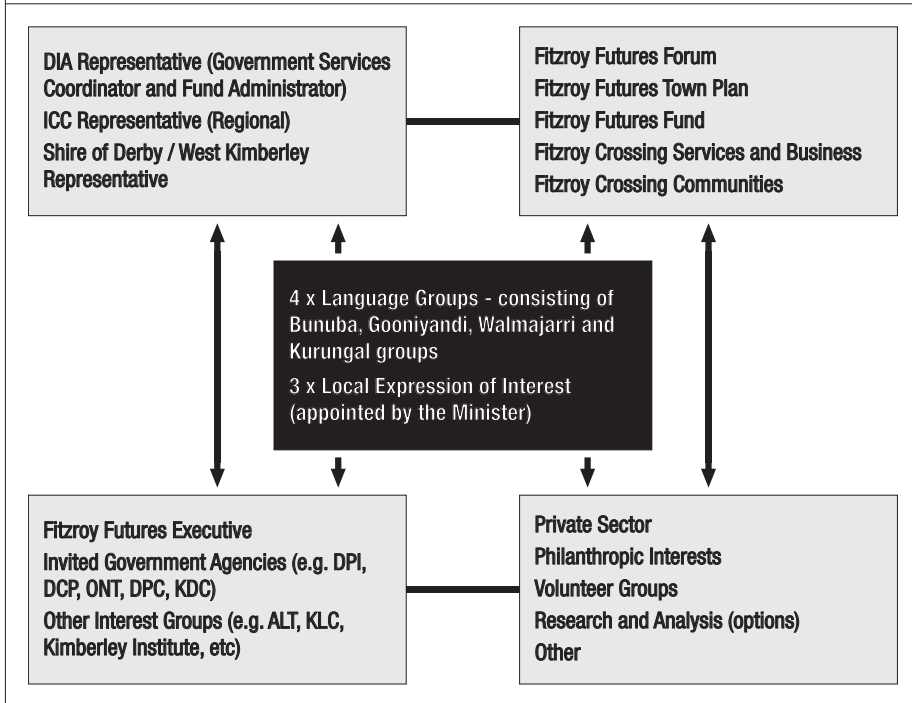
62 M White, *Community-Owned Approaches to Social Recovery – Overcoming Despair in the Fitzroy Valley: Service Analysis of the determinants necessary for a good life well lived*, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Warra Warra Aboriginal Corporation, Nindilingarri Cultural Health, Kimberley Aboriginal Law and Cultural Centre (2009), pp 7-8. At [http://www.aph.gov.au/senate/committee/clac\\_ctte/suicide/submissions/sub120.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/suicide/submissions/sub120.pdf) (viewed 25 August 2010).

63 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

64 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

65 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

**Figure 3.1: The Fitzroy Futures Forum Engagement Structure<sup>66</sup>**



The Forum has a ‘soap-box session’ where residents can have their say about the future of the Valley. Acting Western Australian State Manager, Department of Families, Housing, Community Services and Indigenous Affairs, Richard Aspinall described the impact of this platform for local voices:

How do you develop capacity for leadership? You develop it by having the structures to allow leadership to flourish and grow. The Fitzroy Futures Forum allows people to explore their own leadership; you have a soap box for people to say where they want the Valley to go. That brings self-confidence.<sup>67</sup>

Forum meetings are held quarterly and extraordinary meetings can be called if the need arises.

Whilst I was there we had the best part of 10 or 12 meetings, they were good robust meetings. What we wanted to focus on was the \$2.5m Fund. But also the Fitzroy Futures Town Plan was a key priority to get endorsed by the community and the state. This was so people can process things like land tenure. They were the first two things. As the meetings rolled on other things came up like the swimming pool for the area, there was also landscaping or streetscaping. There was work on the bridge, roads, airstrips for remote communities, employment opportunities, additional funding for local services, renal dialysis facilities. All sorts of things were spilling out of the meetings.<sup>68</sup>

<sup>66</sup> Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010), p 12.

<sup>67</sup> R Aspinall, Acting Western Australian State Manager, Department of Families, Housing, Community Services and Indigenous Affairs, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 5 August 2010.

<sup>68</sup> T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

These public meetings are increasingly well attended. All three tiers of government (local, state and federal) are represented at Forum meetings. They have become the accepted vehicle to transmit information across the Valley communities.

The Forum is the interface for services coming into the Valley:

The Forum is the entry point. It is about getting governments and other service providers to realise that they need community perspectives to influence their delivery. A few agencies have presented and said we are going to give this to you, and people say hang on did we ask for that? This has to stop, the government just coming in and imposing programs. Work with us.<sup>69</sup>

Through the Forum, the communities have been engaged in the process of designing a range of infrastructure projects such as the school, the swimming pool and the police station.<sup>70</sup>

#### (iii) *The Fitzroy Futures Fund*

Early in its operation 'cocktail funding' (funding from a variety of sources) was identified by the Forum as restricting the effectiveness of many projects in the Valley. The small amounts of money on short funding cycles made it difficult to plan and to develop any longer term projects. Ultimately, 'cocktail funding' impeded socio-economic outcomes for local people.

In 2007, the Western Australian Government acted to address some of this funding complexity. They established the Fitzroy Futures Fund. This Fund is \$2.5 million over 5 years to support social and economic development projects in the Fitzroy Valley. The Fund was created with additional funding allocated through budgetary processes, and was administered by the Western Australian Department of Housing and Works. From 1 January 2010, the administration of the Fitzroy Futures Fund was transferred to the Western Australian Department of Indigenous Affairs.<sup>71</sup>

The Fund is earmarked to support local individuals and community organisations and enterprises. In accordance with the Funding Agreement, monies from this Fund are not allocated to projects that should be funded by government; for example the provision of sewerage infrastructure remains the responsibility of government, as it is in any other town or community.

The communities are invited to apply for grants from the Fitzroy Futures Fund. The Fitzroy Futures Forum Governing Committee (discussed in further detail below) makes recommendations on what projects should be funded. These recommendations are sent to the Minister for Indigenous Affairs (WA) for sign off.

The Governing Committee is comprised of Aboriginal leadership representing the four language groups of the Fitzroy Valley, government officials from all three tiers of government and community representatives to accommodate non-Aboriginal interests in the Valley.

The result is that decision-making processes for the approval of projects and expenditure of the Fund are devolved to the Fitzroy Futures Forum Governing Committee which represents the Fitzroy Valley communities.

Grants are made available to Fitzroy Valley community organisations and individuals, and are allocated under one or more of the following strategic program areas:

---

69 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

70 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

71 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

1. infrastructure
2. economic development
3. education, skills and training
4. community development
5. natural resources
6. governance.<sup>72</sup>

These strategic program areas were developed by the Fitzroy Valley communities. Application processes were also developed with local input. Individuals and organisations are eligible for assistance in the application process from the Executive Officer and Community Consultant.<sup>73</sup> In this way, the Fund operates for the communities and reflects local needs.

A range of grants have been awarded to organisations, communities and individuals. For example:

- Kurnangki (an Aboriginal community within the town borders of Fitzroy Crossing) was awarded a grant to conduct a feasibility study for the design of a multipurpose facility, which might function as a youth centre, meeting place, cooking facility, study area and childcare centre.
- an individual grant was awarded to a community member for the purchase of an existing wood stove pizza business. The Fitzroy Futures Fund provided a percentage of the funds, and the remaining shortfall was met by Indigenous Business Australia. This venture now employs a number of youths from the Valley.<sup>74</sup>

The Fitzroy Futures Fund also provides grants for the benefit of the Fitzroy Valley region. The *Fitzroy Population Project* is one of example of this type of grant.

**Text Box 3.3: The Fitzroy Futures Fund in action: the *Fitzroy Population Project***

There is an increasing need for accurate demographic information and baseline data to describe remote Indigenous communities across Australia. Planning for economic development, services and infrastructure is reliant on this information.

Acting through the Fitzroy Futures Forum, the people of the Fitzroy Valley identified a requirement for an accurate demographic profile of the region. This was a priority for three reasons:

1. It was widely accepted that the 2006 national census undercounted the population in the Kimberley region and other population counts were similarly inadequate. Accurate baseline data were needed to inform policy development.<sup>75</sup>

72 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

73 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

74 K May, Fitzroy Futures Forum Executive Officer, Correspondence to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 31 August 2010.

75 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010), pp 1-2. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

2. It was necessary to have a baseline population count to reflect the ways in which the Fitzroy Valley defines itself. Local government boundaries do not reflect the self-defined boundaries of the communities in the Fitzroy Valley.
3. The statistics captured in the census data do not reflect the dynamic lived realities of the population in the Fitzroy Valley including the population movements.<sup>76</sup>

Using money from the Fitzroy Futures Fund, the Fitzroy Futures Forum commissioned the *Fitzroy Population Project*. The project did not count the non-Aboriginal population in the Valley because the census data were believed to be more accurate. The project aimed to capture the cultural reality of the Aboriginal population.<sup>77</sup>

Funds were granted to Marninwarntikura and the Centre for Aboriginal Economic Policy Research at the Australian National University to undertake the project.<sup>78</sup>

Work on the project began in March 2009, and the completed report was presented to the Forum during 2010. This project provides the Fitzroy Futures Forum with an evidence-based tool for influencing policy development.

The survey collected two different kinds of data.

1. Demographic information about the Aboriginal communities including community members age and sex.
2. Population data that captures information about the cultural, relational and environmental factors that impact on patterns of settlement and mobility.

The data aims to encapsulate the social fabric of the communities in the Fitzroy Valley.<sup>79</sup> The data collection is framed by an Aboriginal perspective. In other words, the data reflects the priorities and world views of the residents rather than statistical indicators developed in Canberra.

Now the project is completed, the data are owned by the Fitzroy Futures Forum. The data will remain in the Valley for the benefit of the residents of the Valley.

#### (i) *The Fitzroy Futures Governing Committee*

The Fitzroy Futures Forum Governing Committee was established to ensure that the decision-making processes for grants under the Fitzroy Futures Fund were accountable, transparent and community owned. The Governing Committee consists of:

- a representative from each of the four main language groups from the Fitzroy Valley area
- a Representative of the Shire of Derby/West Kimberley
- a State government official from the Department of Indigenous Affairs (who is also the Executive Officer)

76 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at the WA Women's Advisory Council Conference, Perth, 14 June 2010).

77 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010). At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

78 Centre for Aboriginal Economic Policy Research, *Annual Report 2009*, Canberra (2010), p 25. At <http://caepr.anu.edu.au/system/files/Reports/AnnualReport2009.pdf> (viewed 24 September 2010).

79 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010), p 2. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

- an Australian Government official represented from the West Kimberley Indigenous Coordination Centre
- three self-nominated community representatives who live in Fitzroy. These members are appointed by the Minister.<sup>80</sup>

A defining feature of the Fitzroy Futures Forum Governing Committee is that community representatives participate on equal footing with representatives from each of the three tiers of government. The structure of the Governing Committee is designed to facilitate communication and partnership between the communities and government. This model of membership ensures representation from the different Aboriginal language groups in the Valley and non-Aboriginal interests. It also reflects the Aboriginal leadership's aspiration that the Fitzroy Futures Forum represents both the Aboriginal interests and the interests of all Valley residents.

The Governing Committee is responsible for responding to and actioning issues, concerns and priorities that emerge from the Forum 'floor':

After the Forum meetings the Governing Committee would stay back and look at what were things needed to be elevated out of the communities. What things needed to be raised to government, and what things could be sorted out in town through local services. The issues that were sorted out in town were often cost neutral and didn't need government involvement. Maybe it was just a communication thing. But other things needed to go out for greater discussion.<sup>81</sup>

The Governing Committee acts as an advocacy and coordination body for the Fitzroy Valley. The Governing Committee recommends funding allocations, progresses local projects and reports to the communities at Forum meetings.

In addition to the Governing Committee, a small executive provides secretariat support for the Fitzroy Futures Forum. This executive is comprised of an Executive Officer, who is employed by the Department of Indigenous Affairs, and a Community Consultant who is funded by the Department. The Executive Officer assists in the coordination and delivery of government services and provides secretariat support. The Community Consultant is an Aboriginal person from the Valley, with a role to consult with residents about the provision and coordination of government services and the functions of the Fitzroy Futures Forum.<sup>82</sup>

### **(b) The strengths of the Fitzroy Futures Forum**

The reason it has worked is the community started it, they drove it, they pushed it. They endorsed the guiding principles. The community owns it, they just want some administrative support to help it go along its journey.<sup>83</sup>

The Fitzroy Futures Forum is an effective conduit between community-level interests and requirements, and government and non-government service delivery. The foundation of this mechanism is a relationship built on trust and mutual respect. This requires an honest and open conversation about what is achievable and what is deliverable. It is underpinned by good faith from both parties.

---

80 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

81 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

82 K May, Fitzroy Futures Forum Executive Officer, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 15 June 2010.

83 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.



The Aboriginal membership operates as ‘the interface’ between government and the Aboriginal communities in the Valley.<sup>84</sup> From a policy and service delivery perspective the Fitzroy Futures Forum is recognised by government and service providers as a key entry point into the Fitzroy Valley.

The active role of residents in setting the agenda for the future of the Fitzroy Valley is community development in practice. It is the process of active participation that builds community capacity.

The Fitzroy Futures Forum is space at a local level for dialogue between Aboriginal people and non-Aboriginal people. There is a need to find a ‘space’ to engage with people. There hasn’t been that space in the Fitzroy Valley. We need space to engage and discuss in respectful and supportive ways. In Fitzroy we have moved from standing in the trenches throwing grenades, now we can sit and talk respectfully and deal with the issues our community faces.<sup>85</sup>

**Text Box 3.4: Community organisations dealing with community problems<sup>86</sup>**

**Transcript from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – *Involvement of Indigenous juveniles and young adults in the criminal justice system.***

**CHAIR (Hon Bob Debus)** – It is very interesting to us that you have a number of organisations that seem to be created within the community and designed for the community. You designed them; someone did not design them for you. Is that fair to say?

**Ms (June) Oscar** – That is right.

**CHAIR** – Do you think that is why they work?

**Ms Oscar** – Very much so. It takes in local ownership and local control, which is far more successful than something that is introduced and we are expected to make it work. Regional bodies or national bodies and structures being developed and designed, and then being expected to work at a local level, I think needs rethinking and review.

**CHAIR** – Yes.

...

**Hon Danna Vale** – It is clear to us that there is not sufficient Indigenous input into a lot of the programs at local level. One of the reasons that we wanted to come to speak to all of you [in Fitzroy] is that it was the Indigenous ownership, control and implementation that obviously has made Fitzroy Crossing the wonderful town that we are seeing out there today.

The Fitzroy Futures Forum is unique because of the high-level engagement between government and a community-generated forum. Government officials hear first hand the aspirations of the communities, and the communities hear first hand from government officials what can be delivered.

84 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 54. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

85 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

86 Commonwealth, *Official Committee Hansard: Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, (31 March 2010), pp 4, 11. At <http://www.aph.gov.au/hansard/reps/commtee/R12898.pdf> (viewed 9 August 2010).

It is a collaborative process for determining the nature and type of government services and resources in the Fitzroy Valley. This is a fundamental strength of the Fitzroy Futures Forum:

The central theme of [the Fitzroy Futures Forum's] message and approach to the community has been: work together as a community and government can't ignore you; and to government: if you are not listening to community-identified and supported priorities you are not providing good governance.<sup>87</sup>

These unique strengths of the Fitzroy Futures Forum were noted by the Coordinator General for Remote Indigenous Services.<sup>88</sup>

### (c) The Fitzroy Futures Forum and the future

Some people ask me whether I think it is a good thing that people from the Valley are questioning the Governing Committee and the representativeness of the Forum. I think it is a good thing. It means people are actively participating in the future of the Valley.<sup>89</sup>

The Fitzroy Futures Forum has the potential to permanently restructure the relationship between the Aboriginal people of the Fitzroy Valley, the broader non-Aboriginal residents and the three tiers of government. If its current strengths are built upon, the Fitzroy Futures Forum could develop into a governing authority for the Valley region.<sup>90</sup>

The Fitzroy Futures Forum is currently undergoing a review process that will guide its future direction. This review is being conducted by the Executive Officer and the Community Consultant over a two week period. The review will include meetings with government agencies, community organisations and community residents.<sup>91</sup>

The community can shape the Fitzroy Futures Forum, it can be open and honest and challenging some things that aren't working as well as they could. We have this review process so we can look at strategies to make it work better.<sup>92</sup>

One of the challenges that the Fitzroy Futures Forum is facing is how it will evolve in light of its own successes. Forum meetings are increasingly well attended. This has made it difficult for certain sectors of the communities to feel that they are able to actively participate.

The vast geographic distances of the Fitzroy Valley also present a challenge for communication and engagement. It is difficult to engage all residents in such a vast

---

87 K Thorburn, 'Fitzroy Futures Forum: A new approach to partnerships' in J Hunt and S Garling (eds), *Community Governance An occasional newsletter from the Indigenous Community Governance Project: Vol 3 No 2* (2007), p 5. At [http://caepr.anu.edu.au/system/files/cck\\_misc\\_documents/2010/06/CG\\_Newsletter\\_Vol.3\\_No.2.pdf](http://caepr.anu.edu.au/system/files/cck_misc_documents/2010/06/CG_Newsletter_Vol.3_No.2.pdf) (viewed 6 September 2010).

88 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), pp 54, 95. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

89 J Ross, community member, meeting with the Aboriginal and Torres Strait Islander Social Commissioner, Fitzroy Crossing), 31 July 2010.

90 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at WA Women's Advisory Council Conference, Perth, 14 June 2010), p 10.

91 K May, Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

92 R Murphy, community member and Fitzroy Futures Forum Community Consultant, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

area. For example, communities near the eastern border of the Valley are closer in distance to Halls Creek than Fitzroy Crossing.<sup>93</sup>

At the outset it was agreed that the representatives from each of the language groups on the Governing Committee were to act as the conduit for communities that could not attend the Forum meetings. There is a feeling that this is not working as effectively as it could, and other communication methods should be examined. The review process will provide the residents of the Valley with an opportunity to make suggestions about all aspects of the Fitzroy Futures Forum.<sup>94</sup>

Local Aboriginal organisations have indicated a desire to expand the process and role of the Fitzroy Futures Forum. They are hoping for support and resources that will enable local leadership to work with the local communities to take full ownership, and control of the design, delivery and implementation of government services and programs addressing social issues in their region.<sup>95</sup>

Despite the strength and success of the Fitzroy Futures Forum, some local leaders have expressed concern about its future role and function in light of the roll out of the Remote Service Delivery Partnership in Fitzroy Crossing.<sup>96</sup>

In my visit to the Fitzroy Valley it was stressed to me on a number of occasions that there was a real fear that this Council of Australian Government (COAG) process could undermine the potential success of the Fitzroy Futures Forum. This concern is magnified because formal support and funding for the Fitzroy Futures Forum from the Western Australian Government ends in June 2011.

### 3.3 A community response to Fetal Alcohol Spectrum Disorders

When Aboriginal people are given or take responsibility to address the issues in their community and can come up with their own solutions you will end up with a better way of addressing these issues. This is what we did with issues of Fetal Alcohol Spectrum Disorders and early life trauma in the Fitzroy Valley.<sup>97</sup>

You all know the destructive impact of alcohol. For many families and communities in the Kimberley it has been an unmanaged epidemic... The most insidious element of this evil is that it diminishes the lives of so many of the unborn. The horrors of Fetal Alcohol Spectrum Disorders are now just beginning to be understood by Australian governments.<sup>98</sup>

---

93 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010). At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

94 R Murphy, community member and Fitzroy Futures Forum Community Consultant, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

95 M White, *Community-Owned Approaches to Social Recovery – Overcoming Despair in the Fitzroy Valley: Service Analysis of the determinants necessary for a good life well lived*, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Warra Warra Aboriginal Corporation, Nindilingarri Cultural Health, Kimberley Aboriginal Law and Cultural Centre (2009), pp 7-8. At [http://www.aph.gov.au/senate/committee/clac\\_ctte/suicide/submissions/sub120.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/suicide/submissions/sub120.pdf) (viewed 25 August 2010).

96 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 54. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

97 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, 2 August 2010.

98 J Oscar, community member and CEO of Marninwarntikura, *East Kimberley achievements award speech* (Speech delivered 19 September 2009), p 2.

Excessive alcohol consumption is an increasing health concern across Australia. A report released in 2010, titled *The Range and Magnitude of Alcohol's Harm to Others*, stated that alcohol abuse is costing Australia in excess of \$20 billion each year.<sup>99</sup>

The numbers of Australians reported to drink at risky and high risk levels has risen from 8% in 1995, to 13% in 2004–05.<sup>100</sup> This increase has been more pronounced in women, where the numbers have doubled from 6% to 12% in that timeframe.<sup>101</sup> The highest rates of alcohol consumption are in adolescents and young adults.<sup>102</sup> Experts argue that these high rates of alcohol consumption by women of a childbearing age are a cause for concern, particularly given the evidence that approximately half of all pregnancies are unplanned.<sup>103</sup> Furthermore, surveys suggest that between 50–59% of women consume alcohol at some stage whilst pregnant. In one study, 20% of women indicated that they had participated in binge drinking at least once when pregnant.<sup>104</sup>

Considering these statistics, it is possible that the issues associated with alcohol exposure during pregnancy, resulting in FASD, will become an increasingly prominent health and wellbeing concern for the Australian community to respond to.

The people of the Fitzroy Valley have identified FASD as an issue of particular concern that they want to exert control over addressing. Paediatricians working in the Kimberley estimate that up to 30% of children in the Fitzroy Valley are affected by FASD.<sup>105</sup>

FASD are a set of disorders that may occur when a mother consumes harmful quantities of alcohol at crucial points during pregnancy and are potentially 100% preventable. The disorders create barriers to normal child development; including learning and behaviour.

FASD represent a group of permanent disorders caused by exposure of the unborn child to alcohol consumed by the mother during pregnancy. These disorders include fetal alcohol syndrome (FAS) and partial FAS, alcohol-related neurodevelopmental disorder (ARND) and alcohol-related birth defects (ARBD). Babies exposed to alcohol *in utero* may be born with deformities of the brain, nervous system, kidneys, heart, lungs, eyes, ears; may have growth problems; and may display a series of specific facial characteristics. Developmental, behavioural and learning problems are common. What is most devastating about this condition is that it is 100% preventable.

Long term outcomes for children with FASD are poor. Overseas research suggests that 90% will have mental health problems, 80% will remain unemployed, 60% will come into aggravated contact with the law and less than 10% will be able to work independently by the age of 21.<sup>106</sup>

---

99 AM Laslett, P Catalano, T Chikritzhs, C Dale, C Doran, J Ferris, T Jainullabudeen, M Livingston, S Matthews, J Mugavin, R Room, M Schlotterlein and C Wilkinson, *The Range and Magnitude of Alcohol's Harm to Others*, Alcohol Education and Rehabilitation Foundation (2010), p 177. At [http://www.aerf.com.au/Harm\\_to\\_Others\\_Full\\_Report\\_with-errata.pdf](http://www.aerf.com.au/Harm_to_Others_Full_Report_with-errata.pdf) (viewed 10 September 2010).

100 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 18.

101 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 18.

102 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 19.

103 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 19.

104 See L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 20.

105 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 6.

106 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 5.

Every child, including a child with FASD, has the right to health, happiness and educational attainment.<sup>107</sup> Children with FASD have complex health, social and educational needs that require targeted service and policy responses. Exposure to alcohol in the womb can cause many problems including birth defects, learning difficulties, abnormal hearing or vision, and behavioural and psychological disorders. The key to ensuring that affected children are able to reach their full potential, and to lead happy and healthy lives, is to enable early diagnosis and intervention using multi-disciplinary assessment. The provision of ongoing family support is also necessary.<sup>108</sup> It is therefore imperative that children with FASD – wherever they live in Australia – have equitable access to the services they need to optimise their health, development and educational outcomes.

In evidence provided to the Coronial inquest in the Kimberley, Professor Fiona Stanley referred to the problem of FASD as being ‘another Stolen Generation’.<sup>109</sup>

Paediatricians in the Kimberley are talking about 1 in 4 children affected by alcohol in our current cohort of young children. If you are talking about an Indigenous culture that relies on the maintenance of an oral history and oral tradition and the ability to pass on that tradition and of knowledge then the underpinning foundation of that is your memory. And if you can’t remember things then how our Indigenous people going to pass on their culture?<sup>110</sup>

I highlight the actions of Fitzroy Valley leaders in addressing FASD because of their community-ownership over an identified issue of concern. The FASD project is led by the Fitzroy Valley communities, and where needed, the skills and expertise of trusted external partners are utilised. Consent processes are embedded into the fabric of this project to create a community-wide climate of consent. These key features provide an example of processes that address sensitive and seemingly intractable issues in an appropriate and targeted manner. The consequent result borne out of these processes is a high level of community buy-in and engagement.

#### **(a) Designing the Fetal Alcohol Spectrum Disorders strategy**

FASD has been an issue of concern for Fitzroy Valley residents for some time. It was discussed at a community meeting on alcohol and other drugs in 2004.<sup>111</sup> However, it took the advent of the alcohol restrictions to unite the communities into taking action.

FASD had been an issue but with the chronic supply of alcohol you couldn’t get traction. People did want to know about it. A lot of people knew something was wrong with our children because of the alcohol. It was after the restrictions that people were ready. And it started to get traction when it was explained to the elders that passing on culture to the next generation would be broken. The elders were concerned about the loss of culture.<sup>112</sup>

---

107 *Convention on the Rights of the Child*, 1989, preambular para 6, arts 23, 24, 25, 28, 29. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 15 September 2010).

108 E Elliott, J Payne, A Morris, E Haan and C Bower, ‘Fetal alcohol syndrome: a prospective national surveillance study’ (2008) 93 *Archives of Disease in Childhood* 732.

109 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner’s Court of Western Australia (2008), p 14.

110 J Ross, community member, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 16:34.

111 E Carter, community member and Chair of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

112 E Carter, community member and Chair of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

There has been significant recent international focus on the importance of culture and identity in the development processes of Indigenous communities.<sup>113</sup> This work builds on the central importance placed on culture and identity in the *United Nations Declaration on the Rights of Indigenous Peoples*. International human rights standards have developed to the point where states have obligations to work with Indigenous peoples to implement measures for the maintenance, protection, development and transmission of culture and cultural knowledge.<sup>114</sup>

FASD is a genuine threat to the preservation of the Aboriginal cultures of the Valley. Impaired memory and an inability to learn and retain information are major components of FASD. Behavioural and learning problems also limit educational gains. Given our oral traditions of passing down cultural knowledge through stories and ceremony, there is a very real possibility that cultural knowledge will be lost as a result of FASD. The majority of cultural knowledge is not part of a written history. Therefore, its continuation is reliant upon the ability of elders to pass this knowledge on to future generations.

In October 2008, just over a year after the alcohol restrictions were brought into the Fitzroy Valley, members of the communities gathered to discuss FASD and other alcohol-related problems. The meeting was led by Aboriginal organisations Marninwarntikura and Nindilingarri Cultural Health Services (Nindilingarri). Community members voiced their concerns that many children and families were suffering from the affects of FASD and Early Life Trauma (ELT). ELT is a term used to describe the environmental factors that can negatively impact on a child's development. Poor nutrition, neglect, and exposure to violence and stress can all lead to ELT. Meeting participants agreed to a multi-pronged strategy of action to address these challenging issues.<sup>115</sup>

In November 2008, a coalition of government agencies, business and community organisations formed a 'Circle of Friends'. All parties pledged in-principle support to a FASD/ELT Strategy and action plan. Below is a diagrammatical representation of the 'Circle of Friends':

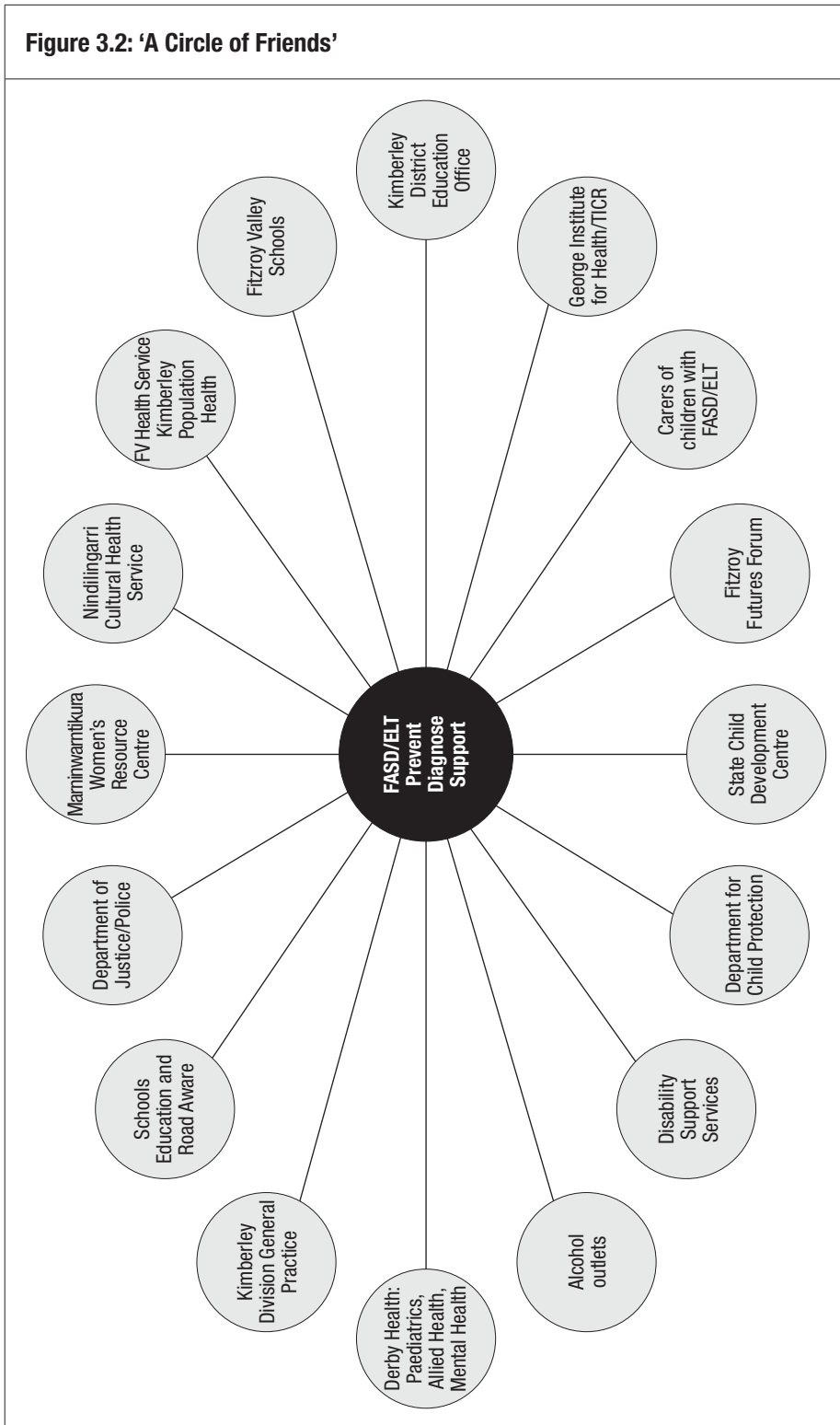
---

113 See Permanent Forum on Indigenous Issues, *Report of the ninth session*, UN Doc E/C.19/2010/15 (2010), paras 4-35. At [http://www.un.org/esa/socdev/unpfii/documents/E\\_2010\\_43\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/E_2010_43_EN.pdf) (viewed 31 August 2010).

114 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), arts 11, 12, 13, 31. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 31 August 2009).

115 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010).

Figure 3.2: 'A Circle of Friends'



The 'Circle of Friends' is a similar model to the Fitzroy Futures Forum in that it engages all relevant stakeholders from a local, regional and national level including the Aboriginal organisations of the Valley and government agencies. All participants are actively involved in the development and implementation of the FASD/ELT Strategy that was endorsed by the FASD leadership team.

(i) *The Marulu Project*

In November 2008, a draft strategy was developed by the CEO of Marninwarntikura, June Oscar and Dr James Fitzpatrick, a paediatric trainee serving the communities. The strategy was called *Overcoming Fetal Alcohol Spectrum Disorders (FASD) and Early Life Trauma (ELT) in the Fitzroy Valley: a community initiative*. This strategy is now described locally as the *Marulu Project*. Marulu is a Bunuba word meaning 'precious, worth nurturing'.<sup>116</sup>

Nindilingarri is the head of a leadership team guiding the project. The *Marulu Project* has a number of areas of focus:

- Prevention – including consulting with the communities to raise awareness of the *Marulu Project*, education across the communities and working with women who are pregnant to prevent alcohol use.
- Diagnosis – including the development of screening and diagnostic processes.
- Support – including mapping the support services in the Valley and developing a network of carers.
- High level dialogue – including strategic use of media, contributing to scientific discussions on FASD, and raising the profile of FASD through strategic partnerships.
- Build local capacity – including participation in relevant workshops and conferences and capturing the process of the project.
- Focus resources – identify and leverage existing resources, approach government and other funders to secure targeted funding for the strategy, and engage local community resources in FASD prevention, support and diagnosis.<sup>117</sup>

Below is a schematic overview outlining the journey in developing the *Marulu Project*.

---

116 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p vi.

117 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), pp 23-24.



Figure 3.3: Schematic of the Marulu Project<sup>118</sup>



Nindilingarri uses the Fitzroy Futures Forum meetings to report to the communities, government and businesses on the progress of the *Marulu Project*.

FASD was earmarked for a full day discussion at the 2009 Marninwarntikura Annual Women's Bush Meeting. This included a presentation by Carolyn Hartness, an Eastern Band Cherokee and FASD consultant from Canada, who has extensive experience working on FASD with Indigenous communities in the United States and Canada. Carolyn Hartness' attendance was made possible through a grant from the Fitzroy Futures Fund.

**Text Box 3.5: Support for action on FASD from the Women's Bush Camp**

The women at the Bush Meeting gave their support to community led approaches to addressing FASD:

We the women at the annual Marninwarntikura Women's Bush Meeting (6–10 July at Wamali Springs on Leopold Downs Station) acknowledged that rebuilding our families and our communities will move forward on the basis of unity and collaboration.

We have agreed that our priorities over the next 2–3 years are:

...

118 The Marulu project team: M Carter, J Oscar, E Elliott, J Latimer, J Fitzpatrick, M Ferreira, M Kefford.

- To raise awareness of FASD and recognize its impact on all aspects of our community including loss of cultural knowledge, lack of employment opportunities, unaddressed educational needs, impact on the justice system and child protection etc. This will require us to create culturally appropriate strategies to address these issues. These strategies will be community driven and maintained.<sup>119</sup>

The Bush Meeting and the Fitzroy Futures Forum were pivotal platforms for keeping the people in the Valley, outside of the leadership team, informed and involved in the development and implementation of the project.

In 2009, the *Marulu Project* leadership group began discussions with researchers from the George Institute for Global Health (The George Institute) about the possibility of conducting a prevalence study of FASD in the Fitzroy Valley. The rationale for conducting a prevalence study was to understand how many children were affected by FASD and to attract funding and resources to manage these children, and prevent FASD. Funding would only be forthcoming once there was a strong evidence base.<sup>120</sup>

### (b) Working with trusted partners

In Fitzroy we bring people in when we identify a problem and a need, rather than people coming in and telling us our problems and our needs. It is about forming strategic partnerships with government and the corporate sector. It is about asking for help but that is strategic and targeted help.<sup>121</sup>

The *Marulu Project* leadership team, headed by Nindilingarri, identified The George Institute as the most appropriate organisation to provide technical and other expertise to the project. The George Institute had previously developed relationships with the communities in producing a documentary, *Yajilarra*. The documentary told the story of alcohol restrictions in Fitzroy Valley.

#### Text Box 3.6: *Yajilarra*: using media as a lever for social change

The alcohol restrictions campaign in the Fitzroy Valley is a powerful story that has been told through a documentary film entitled *Yajilarra*. The women of Marninwarntikura wanted to use the documentary film as a lever for social change. They knew that telling this story would raise the profile of the Fitzroy Valley and alert key players to their continuing needs. The documentary could also act to inspire other Indigenous communities to take control of the issues confronting them. It was felt that film was the ideal medium to communicate the story to the widest audience.

In 2007, June Oscar and Emily Carter from Marninwarntikura invited Elizabeth Broderick, Sex Discrimination Commissioner (Australian Human Rights Commission), to visit Fitzroy Crossing. Commissioner Broderick wanted to assist in making the documentary. Commissioner Broderick introduced the Fitzroy leaders to The George Institute who assisted in sourcing funding to produce the film.

119 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010) pp 28-29.

120 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

121 J Oscar, community member and CEO of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

The documentary has been instrumental in raising the profile of the Fitzroy Valley and issues of FASD and securing funding for the *Marulu Project*. The documentary has been screened in many places in Australia and internationally, including Parliament House and at the United Nations.

*Yajilarra* was a solid foundation for further partnership with the George Institute:

[O]ut of the liquor restrictions the women formed a relationship with The George. They assisted the women to produce *Yajilarra*. There was already that relationship that existed. As a result of the relationship it was easy for us to contact them to help with the strategy. Because of the relationship The George knew about the people they were working with. That is the big difference, it is always the academics that had seen a problem and tell the people 'we are doing it my way'. This is totally different, here the Aboriginal people said FASD was a problem and we worked with The George Institute on the project.<sup>122</sup>

The George Institute was a natural partner in the FASD work with Nindilingarri. The George Institute has expertise in conducting research and in advocacy and has strong relationships with Fitzroy Valley community members. The George Institute engaged an expert paediatrician, Professor Elizabeth Elliott from The University of Sydney, to provide clinical expertise on FASD and sought approval from the leadership team for her involvement in the project.<sup>123</sup>

The current research team includes Nindilingarri, The George Institute, and the Sydney University Medical School at The University of Sydney. Maureen Carter (community member and CEO of Nindilingarri) leads the team that includes June Oscar (community member and CEO of Marninwarntikura), Professors Jane Latimer (The George Institute) and Elizabeth Elliott (Sydney Medical School, The University of Sydney), Dr Manuela Ferreira (Faculty of Health Sciences, The University of Sydney) and paediatric senior registrar Dr James Fitzpatrick, who has been working in the Kimberley for the last two years, and is currently a PhD student at the Sydney Medical school.

The FASD project is community led research working through partnerships with trusted external organisations. Indigenous knowledge is acknowledged and respected in the research process consistent with international human rights standards.<sup>124</sup> External players are brought in to provide strategic support.

#### **(c) Community consent for a prevalence study of Fetal Alcohol Spectrum Disorders**

The whole issue with wanting to address FASD had come from the community. We, as a community, have driven this whole project from the start and will drive it to the finish. Each step we had engagement with the people.<sup>125</sup>

122 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

123 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

124 See T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2008*, Australian Human Rights Commission (2009), ch 7. At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport08/chapter7.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport08/chapter7.html) (viewed 12 August 2010).

125 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

The prevalence study is known as the *Lililwan Project*. Lililwan is a Kriol word meaning 'all the little ones'.<sup>126</sup> The prevalence study focuses on children in the Valley aged seven and eight years. The entire study, from the decision to proceed with it through to actual participation, employs an informed consent process.

The leadership team were committed to the study but they were even more committed to ensuring a prevalence study was what the community wanted. And that the community wanted to go ahead with it. We all knew this was really sensitive stuff and if the time was not right then we were going to stop it.<sup>127</sup>

The research team was invited to consult with the communities and service providers in the Fitzroy Valley between 19–23 October 2009. Members of the consultation team who were not from the Valley undertook cultural awareness training. The consultations were conducted in a range of formats including community forums, planned meetings with key stakeholders and informal meetings. All relevant information about the prevalence study, its aims, methods and possible outcomes was transmitted to the communities. Importantly, a full explanation of the possible risks associated with undertaking this research project was clearly explained. Follow up consultations were had with the Fitzroy Futures Forum and regional government agencies. This consultation process has been documented in *Marulu: The Lililwan Project Fetal Alcohol Spectrum Disorder (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, which includes summaries and recommendations from each of the consultation sessions.<sup>128</sup>

The consultations showed overwhelming support to proceed with a prevalence study from all stakeholders, including the Aboriginal communities and service providers. The widespread feeling was that this study would be an integral component to addressing FASD in the Valley. The community-led nature of this project and the continuing engagement through public forums like the Fitzroy Futures Forum ensured that the residents were kept up to date and were fully informed about the proposed prevalence study. This was fundamental to obtaining consent to proceed with the FASD prevalence study.<sup>129</sup>

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur), Professor James Anaya, has noted that the absence of this type of intensive engagement process can derail programs and projects intended to benefit Indigenous peoples:

The Special Rapporteur has observed that, without the buy-in of indigenous peoples, through consultation, at the earliest stages of the development of Government initiatives, the effectiveness of Government programmes, even those that are intended to specifically benefit indigenous peoples, can be crippled at the outset. Invariably, it appears that a lack of adequate consultation leads to conflictive situations, with indigenous expressions of anger and mistrust, which, in some cases, have spiralled into violence.<sup>130</sup>

---

126 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p vi.

127 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

128 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010).

129 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

130 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 36. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 9 August 2010).

The consultation process for the FASD prevalence study is consistent with a number of the key standards for consulting with Indigenous peoples under international law as outlined by the Expert Mechanism on the Rights of Indigenous Peoples<sup>131</sup> and the Special Rapporteur:<sup>132</sup>

1. **Consultations are carried out through Indigenous peoples representatives, that are chosen by Indigenous peoples themselves** – The consultations were led by the Indigenous members of the research team. The Fitzroy Futures Forum which has representatives from each of the four language groups in the Fitzroy Valley was also used as a vehicle for consultation.
2. **Consultations should be carried out through ‘appropriate procedures’. General public hearings are generally not considered to be ‘appropriate procedures’** – The consultations involved community forums, as well as planned and informal meetings. Follow up consultations were also held.
3. **Consultations should be undertaken in good faith and in the appropriate form. This means that consultations are to be conducted with mutual trust and transparency** – Prior to the consultations, cultural awareness training was provided to the non-Indigenous participants. The consultation process was undertaken over an extended period of time to allow participants the time to absorb information about the project. All relevant information was provided including potential risks of the research project. The report of the consultations process was provided to participants.
4. **Consultations should be in good faith and with the objective to achieve agreement or consent** – At the beginning of the process it was agreed that the study would only proceed on the basis of the informed consent of the people of the Fitzroy Valley. All parties acted in good faith.
5. **There should be periodic evaluation of effectiveness** – The project ensures that evaluations will occur at each stage of the research.

This research project is setting an example to the rest of Australia of how best to approach Indigenous affairs. A process guided by a relationship underpinned by meaningful, respectful engagement and collaboration will always be more effective and successful than one that is not. Harnessing this way of thinking and operating opens a myriad of opportunities to address difficult and sensitive issues in Aboriginal and Torres Strait Islander communities.

Having received informed consent to proceed with the project, the research team set out designing the study. Associate Professor Jane Latimer of The George Institute, described this process:

---

131 Human Rights Council, *Progress report on the study on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), paras 21-25. At [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf) (viewed 23 September 2010).

132 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Report to the Human Rights Council, 12th session UN Doc A/HRC/12/34 (2009), paras 36-57. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 9 August 2010).

So then we started to design the study with the community. We would teleconference each week and we would design it a bit more. From our end we had ethics committees to go through.<sup>133</sup>

Maureen Carter, CEO of Nindilingarri and community member, outlined her perspective of the project's development:

We would look at information given to us by The George Institute but we could sit with them to change the words to make it culturally appropriate. We put the research into our context but it still had to fit within the ethical guidelines of The George.<sup>134</sup>

The project is designed to incorporate necessary elements of Indigenous culture and knowledge as well as meeting the requirements of Western research ethics standards. For example, the parent/carer questionnaire developed by Professor Elliott and Dr Fitzpatrick was modified extensively following consultations with Fitzroy Valley residents and the Kimberley Interpreting Service to ensure its content and language were culturally appropriate.<sup>135</sup>

The *Lililwan Project* is guided by a set of principles and preconditions that are relevant to each phase of the project. These are:

### Principles

1. First, do no harm.
2. Commit to a process of two-way learning.
3. All activity must deliver short and longer term benefits for the communities.
4. Informed participation and consent must be ensured through the sharing of information and knowledge.
5. All activities must preserve the dignity of participating individuals and communities.

### Preconditions

1. Clear and broad informed consent from:
  - the communities broadly
  - local service providers.
2. Local Control – The Project Leadership Team must be, and perceived to be by the communities as being, in control of the study.
3. An appropriate and adequate workforce.<sup>136</sup>

The project was divided into two discrete stages to ensure that the communities are comfortable with the sensitive process:

**Stage 1** Collection of demographic, prenatal, and early childhood data from parents/carers using a diagnostic checklist and review of medical records. This involves interviews with parents/carers including questions on the drinking patterns of mothers during pregnancy and the development patterns of children.

**Stage 2** Health and developmental screening, opportunistic treatment and referral. This includes medical and allied health examinations of

---

133 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

134 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

135 E Elliott, Sydney Medical School, The University of Sydney, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 25 October 2010.

136 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), pp 17-18.

all children born in 2002 and 2003 to estimate the prevalence of FASD.<sup>137</sup>

This study will provide an individual assessment of children and estimate the prevalence of FASD in the Valley. The data from the project will stay with the Kimberley Population Health Unit. The study was designed so that it did not simply diagnose children and leave them in limbo. A care plan will be developed for every child with identifiable problems and ensure they are referred for appropriate and ongoing care. The study will also use the principal findings to advocate for better health and education services. The evidence-base generated can be used by governments to develop a targeted service response to FASD in the Fitzroy Valley.<sup>138</sup>

#### (i) *Continuing consent in action*

Ongoing consent is a precondition of the *Lililwan Project*. Therefore, all participants in the study are to give their informed consent throughout the life of the project and before any new developments are undertaken.

In April 2010, the research team began Stage 1 of the *Lililwan Project*. This involved interviews with mothers and carers of seven and eight year old children in the Valley. The cohort for the study was located using the data from the *Fitzroy Population Project*. The research team was led by two 'community navigators':

We had Aboriginal navigators to help locate the people. These navigators were chosen because of their standing in the community. We had a male and a female navigator, so it was culturally appropriate. Going in with people who know the community meant we gave the researchers information about the families that might be relevant. You know if there had been a loss. The project was done at the pace of the community and that is key. We met with the right significant people in each community first. The researchers were led by the community navigators.<sup>139</sup>

The use of the navigators was an essential component of the continuing consent process. Most of the interviews were conducted by the navigators in conjunction with Dr James Fitzpatrick and Ms Meredith Kefford, a volunteer with Indigenous Community Volunteers, who were both well known in the Fitzroy Valley.

Even though Nindilingarri had been given a strong mandate to proceed with the *Lililwan Project* from the community consultations, obtaining the informed consent from individual families was a fundamental component of Stage 1.

Women are giving you the most sensitive data in the information they provide as part of this research. This information is so incredibly sensitive in relation to terminations of pregnancies, in relation to drug and alcohol use. It is the most sensitive data in their lives. We wanted to make sure no one was coerced in any way.<sup>140</sup>

The consent processes were embedded into the fabric of the project. Consent was sought at every step of the project to ensure participants were not being coerced or did not understand what their involvement entailed.

We wanted to make absolutely sure we were not coercing people in any way, shape or form. So we organised for a senior partner from Blake Dawson to travel with us to be an independent expert in consent and made sure he thought the way we were storing the

---

137 Nindilingarri Cultural Health Services, *Marulu Update Report 1/2010* (2010).

138 E Elliott, Sydney Medical School, The University of Sydney, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 25 October 2010.

139 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

140 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

data and gaining consent from people was the best practice we could have and there was nothing more we could do. It meant there was no risk of coercing people.<sup>141</sup>

When the researchers went out into the communities they would go in and have a barbeque and get introduced to the community by the navigators. With this issue [FASD and drinking alcohol during pregnancy] our people will not talk straight away, they have to get to know you. They have to have time to think about these things before they said yes or no to be involved in the research. We gave them time to think.<sup>142</sup>

As with any research project, the Research Team had to apply for permission from an identified human research ethics committee to conduct the study and to have the study design, parent information sheet, consent form, questionnaire and clinical assessment process approved.

In the case of the *Lililwan Project* this involved not only the University ethics committee (University of Sydney Human Research Ethics Committee) but also the relevant committee in Western Australia (Western Australia Country Health Service Board Research Ethics Committee) and the Western Australian Aboriginal Health Information & Ethics Committee. In addition, all research conducted in the Kimberley must be approved by the Kimberley Research Subcommittee of the Kimberley Aboriginal Health Planning Forum.<sup>143</sup> This committee was established in 2006 to ensure that research conducted in the region that might include Indigenous peoples was coordinated, that the people of the Kimberley would derive the maximum possible benefit from any research conducted there, and that any adverse impact of the research on either the community or its health services would be kept to a minimum.<sup>144</sup> Each part of the *Lililwan Project* will go through this arduous – but absolutely essential and extremely helpful – process.<sup>145</sup>

Data collection for Stage 1 was completed by the end of August 2010.

The success of the *Lililwan Project* so far is testimony to the careful investment in partnership, consultation, negotiation and consent.

So now we have completed Stage 1 and we know that the entire population of children born in 2002 or 2003 across the Valley is approximately 138 children. Of these, we were able to access and contact 132 and 95% of them gave their permission to be interviewed. So we know that the data we will have is representative of the entire population.<sup>146</sup>

In addition to high participation rates, the Research Team reports that Stage 1 of the project has produced high quality data.<sup>147</sup>

Although we haven't measured it specifically we know that when we travel around people have a level of knowledge about FASD. You don't need to start explaining from

---

141 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

142 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

143 See Kimberley Aboriginal Medical Services Council, Kimberley Aboriginal Health Planning Forum, <http://www.kamsc.org.au/research/kaahpf.html> (viewed 28 October 2010).

144 Kimberley Aboriginal Medical Services Council, Kimberley Aboriginal Health Planning Forum, <http://www.kamsc.org.au/research/kaahpf.html> (viewed 28 October 2010).

145 E Elliott, Sydney Medical School, The University of Sydney, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 25 October 2010.

146 J Latimer, The George Institute, interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

147 J Latimer, The George Institute, interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.



### Chapter 3 | From community crisis to community control in the Fitzroy Valley

the start. The community has a level of knowledge that if we had been there three years ago they would not have had.<sup>148</sup>

The community driven nature of the *Lililwan Project*, with consent processes embedded into its fabric, provides strong evidence that, when empowered to do so, Indigenous communities can address their most sensitive and difficult issues.

#### (ii) *Assessing the prevalence of FASD and developing appropriate response*

Data collection for Stage 2 of the project will commence in May 2011 led by clinicians from the Discipline of Paediatrics and Child Health Care at Sydney Medical School, Sydney University. It will see a comprehensive multidisciplinary health and developmental assessment of all children. This will include physical and cognitive assessments of the children. It will identify the functionality of each child and to indicate what health and educational support structures will be needed for each FASD affected child. In other words it will create individually targeted management plans. This Stage will be complete by the end of 2011.

The George Institute obtained philanthropic funding for the initial consultations and Stage 1. Nindilingarri, The George Institute and The University of Sydney actively sought government funding for Stage 2. In July 2010, the Minister for Families, Housing, Community Services and Indigenous Affairs (Minister for Indigenous Affairs) and the Minister for Indigenous Health jointly announced that the Australian Government would support Stage 2 of the *Lililwan Project* with a \$1million grant to the research collaboration.<sup>149</sup> This will support approximately half the cost of the project.

This project is considered to be one of the many positive developments emerging out of the Fitzroy Valley since the alcohol restrictions.

## 3.4 The challenges ahead in governance

The last thing we want on the back of the positive profile that the Fitzroy Crossing has achieved is additional investment by government in the things they have always done... That would be disastrous because it would simply create confusion and undermine the authority of the Aboriginal community leaders who have achieved so much [since 2007].<sup>150</sup>

Since the beginning of my term as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have spent time visiting Aboriginal and Torres Strait Islander communities across Australia. A common theme that continues to be brought to my attention is the uncoordinated delivery of government services and programs and the detrimental impact this is having on communities.

Like many remote communities, this bureaucratic confusion has had negative impacts in the Fitzroy Valley and the Kimberley region. Janet Hunt and Diane Smith from the Centre for Aboriginal Economic Policy Research outline the inherent difficulties communities face when government does not effectively coordinate services:

---

148 J Latimer, The George Institute, interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

149 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and The Hon W Snowden MP, Minister for Indigenous Health, 'Foetal Alcohol Spectrum Disorder study', (Media Release, 17 July 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/foetal\\_alcohol\\_study\\_17july10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/foetal_alcohol_study_17july10.aspx) (viewed 10 August 2010).

150 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), p3-4. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.ashx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.ashx) (viewed 15 September 2010).

Multiple levels of government and agencies all want their patch and all have their own advisory committees or reference groups. All are advisory and create their own bureaucratic dysfunctions within communities. It creates divisions, inefficiencies with no clear line of power or decision-making process. The fragmented coordination of government services fragments the community.<sup>151</sup>

The consequence is that these programs fail, the community is left to untangle a bureaucratic mess, and disadvantage is further entrenched. Noel Pearson has argued that this bureaucratic entanglement dis-empowers the community and fosters Indigenous 'passivity'.<sup>152</sup> The role of government needs to transform to that of an enabler; to do this governments must reform their ways of working.

### **(a) National Partnership Agreement on Remote Service Delivery**

The Remote Service Delivery is an opportunity where government has been heard loud and clearly that this is a new arrangement, let's take that on and work creatively.<sup>153</sup>

Governments of Australia have agreed to reform the way they do business in remote communities in Australia. The COAG National Partnership Agreement on Remote Service Delivery (Remote Service Delivery Partnership) is the framework for this new way of providing services. This National Partnership Agreement is a whole-of-government approach to the delivery of services in remote priority locations. Appendix 5 provides a detailed outline of the Remote Service Delivery Partnership.

Fitzroy Crossing is one of the 29 priority communities designated for the roll out of COAG's Remote Service Delivery Partnership. The Remote Service Delivery Partnership marks renewed political will and unprecedented levels of funding for services to these priority locations.

In effect, the Remote Service Delivery Partnership is a national commitment to stop the blame game and begin reforming the way remote services are delivered. This commitment opens an opportunity to rectify the years of under-investment in remote Australia and to address the systemic and underlying causes of entrenched economic and service disadvantage.

At a high policy level the Remote Service Delivery Partnership promises a new whole-of-government, coordinated approach to delivering services working in partnership with local Indigenous communities. It could offer new ways of working that address the problems of coordination through a paradigm shift away from the silo mentality of government service delivery.

A single government office in each priority community provides a direct government interface for the delivery of services. This is the office of the Local Area Coordinator (or Government Business Manager) and the Indigenous Engagement Officer. Regional Operations Centres provide additional support. Fitzroy Crossing is supported by the Broome Regional Operations Centre, which also services the other priority locations in Western Australia; Beagle Bay, Ardyaloon and Halls Creek. The roll out of these reforms is monitored by the Coordinator General for Remote Indigenous Services (Coordinator General).<sup>154</sup>

---

151 J Hunt and D Smith (Centre for Aboriginal Economic Policy Research), meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 27 May 2010.

152 N Pearson, 'Fattest hand is first in the till', *The Australian*, 23 January 2010. At <http://www.theaustralian.com.au/news/opinion/fattest-hand-is-first-in-the-till/story-e6frg6zo-1225822681572> (9 June 2010).

153 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

154 See Office of the Coordinator General for Remote Indigenous Services, *Role of the Coordinator General*, <http://cgris.gov.au/site/role.asp> (viewed 10 September 2010).

The challenge for the Remote Service Delivery Partnership is to ensure that high level policy translates into action and outcomes on the ground that leads to effective and appropriate delivery of services.

#### **(b) Combating a business as usual approach**

In 2004, former Secretary of the Department of Prime Minister and Cabinet, Dr Peter Shergold referred to whole-of-government approaches to delivering services in Indigenous communities as a 'bold experiment' and as 'the biggest test of whether the rhetoric of connectivity can be marshalled into effective action'.<sup>155</sup> In a speech made in 2008, Tom Calma, as Social Justice Commissioner, argued that:

The capacity of government to deliver on its commitments is the proverbial 'elephant in the room'....

There are two key issues at stake here. The first is the ability of the federal government to work on a whole of government basis, where the life circumstances of Indigenous people are not divided into smaller bureaucratic responsibilities that inevitably do not fit together or cover the whole.

And the second is the capacity of this system to respond to the circumstances of Indigenous people wherever they live.<sup>156</sup>

In that speech, Tom Calma quoted politicians from both sides of the political spectrum, as well as senior bureaucrats, all of whom were strong in the belief that a business as usual approach to Indigenous affairs was not working.<sup>157</sup>

The Remote Service Delivery Partnership offers an alternative. However, high level agreements outlining new ways of working mean nothing unless they translate into better services and resources in communities.

The first report of the Coordinator General of November 2009 noted that in spite of the new arrangements, there is a real challenge translating policies into a format that can fit into a whole-of-government approach to service delivery.<sup>158</sup> This challenge is particularly onerous where agencies or departments have not contributed staff to the single government interface. The Coordinator General has noted that despite commitment to reform ways of working through the Remote Service Delivery Partnership, pre-existing institutional arrangements can inhibit a coordinated whole-of-government approach.<sup>159</sup> The NTER Review Board similarly outlined the difficulty in moving beyond the rhetoric of whole-of-government into real and tangible differences in doing government business.<sup>160</sup>

---

155 P Shergold, *Launch of Connecting Government: Whole of Government Responses to Australia's Priority Challenges, Management Advisory Committee Report No 4* (Speech delivered 20 April 2004) quoted in B Gray, *Council of Australian Governments Trial Evaluation: Wadeye Northern Territory*, WJG & Associates Pty Ltd (2006), p 9. At [http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag\\_trial\\_site\\_reports/nt\\_coag\\_trial/Pages/default.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/nt_coag_trial/Pages/default.aspx) (viewed 9 June 2010).

156 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Essentials for Social Justice: Reform* (Speech delivered at Brisbane, 20 February 2008). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/essentials\\_reform20080220.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/essentials_reform20080220.html) (viewed 8 July 2010).

157 See T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Essentials for Social Justice: Reform* (Speech delivered at Brisbane, 20 February 2008). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/essentials\\_reform20080220.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/essentials_reform20080220.html) (viewed 8 July 2010).

158 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 101. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

159 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 97. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

160 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), pp 43-45. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

At its core, effective coordination of services requires good working relationships underpinned by effective communication. This includes communication that transmits information from government to community and vice-versa, as well as communication within the various levels of government and across their respective agencies.

Effective coordination requires genuine partnerships between local communities and governments. This in turn requires us, as Aboriginal and Torres Strait Islander communities, to be able to actively participate in decisions made about us.<sup>161</sup> In the context of policy development and implementation it means that governments and social services must be positioned so that Aboriginal and Torres Strait Islander peoples take control of their lives. For this positioning to be successful, governments must move beyond a service delivery paradigm to a fully integrated model of engagement.

The critical step required to achieve a significant improvement in the lives of Aboriginal and Torres Strait Islander peoples is that governments and service providers recognise, endorse, and treat us as substantive players and major stakeholders in the development, design, implementation, monitoring and evaluation of all policies, programs and legislation that impacts on us. Embedding this critical step into the reality of policy development and implementation will require a framework or mechanism for Indigenous engagement at the national, regional and local levels.

A manifestation of inadequate coordination and poor communication is red tape. The Coordinator General has received information from almost every priority location that red tape is hindering the delivery of services. The most critical of these concerns is the 'myriad of contracts, reporting requirements and funding periods and the inability to tailor national, State and Territory programs to suit local circumstances'.<sup>162</sup> This view is supported by the findings of the Senate Select Committee on Regional and Remote Indigenous Communities. The Committee argued that regional and remote Indigenous communities needed longer term and more flexible funding arrangements with less burdensome reporting requirements.<sup>163</sup>

A chief concern highlighted by the Indigenous Community Governance Project, a joint research project examining contemporary Indigenous governance conducted by the Centre for Aboriginal Economic Policy Research and Reconciliation Australia, was:

'[W]hole-of-government' policy frameworks and goals are not matched by departmental program funding arrangements, or by the implementation of place-based initiatives

---

161 See *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 18. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 3 August 2009). See also *International Covenant on Civil and Political Rights*, 1966, art 1. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 1 November 2009); *International Covenant on Economic, Social and Cultural Rights*, 1966, art 1. At <http://www2.ohchr.org/english/law/cescr.htm> (viewed 1 November 2009). For a review of international standards regarding the right of Indigenous peoples to participate in decision-making, see Human Rights Council, *Progress report on the study on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010). At [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf) (viewed 23 September 2010).

162 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 103. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

163 Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Third report 2009* (2009), paras 5.27-5.52. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2009/report3/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2009/report3/index.htm) (viewed 22 September 2010); Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Fourth report 2010* (2010), paras 2.204-2.219. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2010/report4/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2010/report4/index.htm) (viewed 22 September 2010).

in Indigenous contexts. Indeed, there appears to be a significant mismatch between policy purpose and policy implementation on the ground.<sup>164</sup>

#### (i) *The Wadeye experience*

Like Fitzroy Crossing, Wadeye is one of the 29 priority communities identified for the roll out of the Remote Service Delivery Partnership. As a former COAG trial site, for a trial that began in 2003, Wadeye has a history of attempts at whole-of-government approaches to service delivery. The COAG trial in Wadeye offers insight into the difference between the rhetoric of whole-of-government and its on-the-ground impact.

Prior to the independent evaluation conducted in 2006 by Bill Gray AM, a former senior government official, Wadeye had been heralded by the then Minister of Indigenous Affairs, as a shining example:

In the COAG trial we dealt directly with the ‘Thamarrurr’ [the local governance arrangement] so each of the clans has been able to have its say. As a result of us listening to the Thamarrurr and responding, life is now improving for the people of Wadeye.

The Thamarrurr, Territory and Australian governments agreed education was a priority and just last week there was a massive increase in the number of children attending school. So much so that more desks had to be put on the barge from Darwin.<sup>165</sup>

The independent review of the Wadeye trial painted a very different picture. The *Social Justice Report 2006* described the findings of the Gray report as identified below.

#### **Text Box 3.7: The ‘Gray Report’: The Wadeye COAG Trial Evaluation – a failed experiment?<sup>166</sup>**

The Wadeye community is the largest Aboriginal community in the Northern Territory and indeed one of the larger Northern Territory towns. Despite extremely low life expectancy, the population has a very high rate of natural increase. Wadeye has appalling health statistics, serious overcrowding, and significant crime and violence which at times render the community virtually dysfunctional.

Wadeye seemed a good choice for a COAG trial – a large community with a number of pressing needs. Initially, there were strong expectations that the COAG trial, based on a whole of government approach and direct engagement with the community (through the Thamarrurr Regional Council), would lead to more effective service delivery and consequently improvements in social and economic circumstances.

As part of the trial, a Shared Responsibility Agreement (SRA) was signed between the Australian Government, Northern Territory Government, and Thamarrurr Council in March 2003. The SRA identified three priority areas for action: Women and families; Youth and Housing; and construction.

164 J Hunt and D Smith, *Indigenous Community Governance Project: Year two research findings*, Centre for Aboriginal Economic Policy Research Working Paper No. 36/2007 (2007), p xix. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP36.pdf> (viewed 31 May 2010).

165 The Hon A Vanstone MP, Minister for Immigration and Multicultural and Indigenous Affairs, *Address to National Press Club* (Speech delivered to the National Press Club, 23 February 2005) quoted in T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), pp 52-53. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 10 August 2010).

166 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), pp 53-54. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 10 August 2010).

The Gray Report shows that in key aspects the trial has been a significant failure. There was no identified leadership of the trial. Contrary to the trial's objective of a reduction in red tape, the burden of administering funds increased markedly. Flexible funding and streamlining did not eventuate. Experience of communications within and between governments was mixed with a reduction in effective communication as the trial progressed.

The government's objective of improving engagement with Indigenous families and communities was not achieved. There was a significant breakdown in relations with Thamarrurr. Other key structures or processes agreed under the SRA, such as Priority Working Groups, either never became operational or faltered.

The community's expectations of improvements in infrastructure and services were not realised. In particular, nothing was done about the priority area of 'Youth'. The community had expected that youth issues, gang violence and safety would be addressed and resolved at an early stage of the trial. Instead this agreed priority area was allowed to 'fall between the cracks.' If anything, things became worse causing considerable disappointment and anger within the community.

Provision of more housing at outstations was seen (and remains so) by the community as the only sustainable solution to overcrowding at Wadeye. At the end of the trial the pressing needs of Wadeye remain. The community needs a major commitment of resources including an urgent investment in housing, especially at outstations. It also needs support for activities and resources to deal with youth and gang-related difficulties.

The Wadeye example shows that cooperation between governments and communities does not simply occur as the result of processes and agreements. A structure must be established to mandate collaborative ways of working and facilitate open dialogue. The Wadeye experience shows that even when there is a local governing body and an intention from government to streamline processes, things can go wrong.

The Thamarrurr Council represented the Wadeye community voices and government departments had their own separate mechanisms for meeting and making agreements.

In contrast to Fitzroy Valley, with the Fitzroy Futures Forum, there was no mechanism of engagement and information exchange that was viewed as legitimate by the local communities and government agencies and departments. This meant there was no authoritative decision-making forum to bring all parties together and progress the agenda. There were no established relationships between government and community members and leaders. At Wadeye, the government responses were characterised by in-fighting between departments and very little was achieved in collaboration with the Thamarrurr Regional Council. Whereas in the Fitzroy Valley, a relationship between the local communities and government has developed that is underpinned by good faith and mutual trust.

The whole-of-government approach in Wadeye actually increased the administrative burden on the Thamarrurr Regional Council. Prior to the COAG trial Thamarrurr Regional Council administered around 60 government funding agreements. Yet at the time of the Gray Review it was administering over 90. The review found that despite the additional resources in the Wadeye community, there was no change in the way services were delivered.<sup>167</sup>

167 B Gray, *Council of Australian Governments Trial Evaluation: Wadeye Northern Territory*, WJG & Associates Pty Ltd (2006), p 9. At [http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag\\_trial\\_site\\_reports/nt\\_coag\\_trial/Pages/default.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/nt_coag_trial/Pages/default.aspx) (viewed 9 June 2010).

This is a very real challenge confronting the roll out of the Remote Service Delivery Partnership.

#### **(c) Key considerations to guide the delivery of government services**

##### *(i) Engagement with local communities*

It's about waking up in the morning and feeling good about the community we live in, not a community judged by the dominant society as being fraught with social problems that need to be managed by constant government interventions.

This is not just my vision. It is the hope of practically all people in my community. And I know what can be achieved because I know my community. I know its capacity and its' potential. I know its depth of leadership and social capital. I know what our people are capable of achieving when they are entrusted with responsibility and given support through resources and responsibility to act.<sup>168</sup>

The former Chief of the Australian Army and now Chair of the Indigenous Implementation Board in Western Australia, Lieutenant General Sanderson has raised concerns about the ways in which governments engage with and provide services in remote Australia. He argues:

Remote governments' running the country from cities can only be about interventions, it cannot be about partnerships. In my experience the only way through social and community problems is through empowerment. In conflict zones you protect citizens by empowerment. If we are to build communities in Aboriginal Australia we must empower the citizens, and this cannot be done through intervention, it can only be done through partnership, facilitation and engagement.<sup>169</sup>

Aboriginal and Torres Strait Islander people must be active participants in the development and implementation of policies that affect us. My predecessor, Tom Calma described it in these terms:

Much of the failure of service delivery to Indigenous people and communities, and the lack of sustainable outcomes, is a direct result of the failure to engage appropriately with Indigenous people and of the failure to support and build the capacity of Indigenous communities. It is the result of a failure to develop priorities and programs in full participation with Indigenous communities.

Put simply, governments risk failure if they develop and implement policies about Indigenous issues without engaging with the intended recipients of those services. Bureaucrats and governments can have the best intentions in the world, but if their ideas have not been subject to the "reality test" of the life experience of the local Indigenous peoples who are intended to benefit from this, then government efforts will fail.<sup>170</sup>

Genuine engagement equals good policy. Human rights standards require the engagement of Indigenous peoples in processes that lead to the design and implementation of policies, programs and legislation that are relevant to us.<sup>171</sup>

Aboriginal and Torres Strait Islander people will be able to engage in the Remote Service Delivery Partnership through the development of the Local Implementation

---

168 J Oscar, community member and CEO of Marninwarntikura, *The Fitzroy Valley – To Dream the Gift of a Better Life* (Speech delivered at Parliament House, Canberra, 18 August 2009), p 2.

169 Lt General J Sanderson, Chair of the Indigenous Implementation Board, WA, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Canberra, 27 May 2010.

170 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Evaluating the external forces which exert an influence on government policy direction* (Speech delivered at the Collaborative Indigenous Policy Development Conference, Brisbane, 27-28 June 2006). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/collaborative20060628.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/collaborative20060628.html) (viewed 30 April 2010).

171 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Report to the Human Rights Council, 12 session, UN Doc A/HRC/12/34 (15 July 2009), paras 43-45. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 19 April 2010).

Plans. These are the centrepiece agreements between local communities and governments. In addition, an increased government presence in communities should foster an increased level of engagement.

However, the Coordinator General has indicated that the level of engagement between government and communities varied between different sites. There were some good examples of engagement, but there was no consistent good engagement in all priority communities.<sup>172</sup>

The Coordinator General has cited the Fitzroy Futures Forum as an excellent example of community-government engagement.<sup>173</sup> The Forum is an effective model for engagement because it is a structure that brings together the Fitzroy Valley communities and government voices in an equal dialogue.

Aboriginal and non-Aboriginal people come together in forums such as the Fitzroy Futures Forum, which includes all residents, service providers, private sector businesses and pastoralists. Anyone you can think of who lives in the Fitzroy Valley can come to that forum, be informed and look at matters that impact all that live here. I understand that it is the only forum of its kind in Western Australia, if not nationally. It is something that we have raised with the Coordinator-General and the people who are involved in COAG's Closing the Gap and remote service delivery programs. We have been promoting it as a model for other organisations in this state as well. This is a community that is growing and embracing everyone. It is about building a safe community where everyone can thrive, particularly our children, and where people feel valued, acknowledged and appreciated for what they do and for their contribution to this community.<sup>174</sup>

What is required is a new relationship that structurally connects the Aboriginal culture and social domain with government's responsibility to provide good government. In the Fitzroy Crossing there is already the beginnings of an Indigenous partnership with government:- the Fitzroy Futures Forum made up of the four language groups.<sup>175</sup>

Genuine engagement can only be facilitated at the local level where all parties can participate and interact. Meeting mechanisms like those of the Fitzroy Futures Forum are essential to the success of engagement.

### (ii) *An effective workforce*

Engagement mechanisms, like the Fitzroy Futures Forum, must be supported by a skilled and culturally competent government workforce. Government officials must be able to position themselves to effectively engage with local Aboriginal and Torres Strait Islander communities, be they from remote, regional or urban locations.

The NTER Review Board found that new attitudes must be developed to redefine the relationship between the entire bureaucracy and Aboriginal and Torres Strait Islander peoples:

---

172 The Office of the Coordinator General for Remote Indigenous Services, Correspondence to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 21 July 2010.

173 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 95. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

174 Commonwealth, *Official Committee Hansard: Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (31 March 2010), p 3 (J Oscar). At <http://www.aph.gov.au/hansard/reps/commtee/R12898.pdf> (viewed 9 August 2010).

175 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), p 4. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.aspx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.aspx) (viewed 15 September 2010).



### Chapter 3 | From community crisis to community control in the Fitzroy Valley

There needs to be much greater understandings of the different world views of Indigenous, cultural and regional richness and the social integrity of Indigenous families and communities.<sup>176</sup>

It also suggested that government officials working with Aboriginal and Torres Strait Islander peoples must be supported with professional development training from nationally accredited training providers.<sup>177</sup> I fully support these findings by the NTER Review Board.

Whilst I was writing this Chapter, the Australian Public Service Commission published Circular 2010/4, *Revision of Special Measures and Identified Positions/Criteria provisions*.<sup>178</sup> This provided Australian Government departments and agencies with updated information on:

- the Special Measures provision for recruiting Aboriginal and Torres Strait Islander people
- the use of Identified Positions/Criteria when recruiting staff with an involvement in issues relating to Aboriginal and Torres Strait Islander peoples.<sup>179</sup>

I support the Special Measures to increase Aboriginal and Torres Strait Islander recruitment in the Australian Public Service (APS). I also welcome the 2009 commitment of COAG, through the *National Partnership Agreement on Indigenous Economic Development* to increase Indigenous employment across all levels of the public sector to at least 2.6% by 2015.<sup>180</sup> I will continue to monitor the progress towards the attainment of these targets.

The Fitzroy Valley experience has shown that Aboriginal and Torres Strait Islander peoples are best placed to address the issues confronting their own communities. Governments would do well to learn from this lesson, and target the maximum possible employment of local Aboriginal and Torres Strait Islander people to manage and work on local programs and services for that community.

In addition to increasing the recruitment of Aboriginal and Torres Strait Islander peoples in the APS, the use of the Identified Position/Criteria helps foster a culturally competent bureaucracy. Identified Positions usually require an additional two criteria to be established by a successful applicant:

- an understanding of the issues affecting Aboriginal and/or Torres Strait Islander people
- an ability to communicate sensitively with Aboriginal and/or Torres Strait Islander people.

---

176 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

177 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

178 Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

179 It also provided an update on the Special Measures provision for the employment of Aboriginal and Torres Strait Islander peoples in the Australian Public Service: Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

180 Council of Australian Governments, *National Partnership Agreement on Indigenous Economic Participation*, [http://www.coag.gov.au/intergov\\_agreements/federal\\_financial\\_relations/docs/national\\_partnership/national\\_partnership\\_on\\_indigenous\\_economic\\_participation.rtf](http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/national_partnership_on_indigenous_economic_participation.rtf) (viewed 16 November 2010).

The selection process for Identified Positions should also have at least one Aboriginal or Torres Strait Islander person on the selection panel and the applicant should have at least one Aboriginal or Torres Strait Islander referee.<sup>181</sup>

I believe the use of Identified Positions is a minimum criteria for employing people to work and engage effectively with Aboriginal and Torres Strait Islander peoples. However, the Australian Public Service Commission stated that despite the fact these criteria have been in existence for some time their use and operation is undermined by confusion. Differential application of similar terms at state and territory jurisdictions was earmarked as a compounding factor.<sup>182</sup>

Currently, departments and agencies are only encouraged to use Identified Positions/Criteria. If government departments and agencies are serious about engaging with Aboriginal and Torres Strait Islander peoples, effective usage of these criteria must be achieved by all levels of the APS, as well as the bureaucracy in other jurisdictions.

To ensure the effective use of Identified Positions/Criteria by all departments and agencies these criteria should be mandated in legislation. The Australian Government should also work through COAG to establish them as national uniform standards.

### (iii) *Meeting the aspirations of local communities*

Community aspirations can be stifled by inflexible funding arrangements. For example, *The Overburden Report* showed that inflexible funding arrangements characterised by complexity and fragmentation hinder the delivery of primary health care by Aboriginal Community Controlled Health Services.<sup>183</sup> This report also suggested that this problem negatively impacts Indigenous organisations across other portfolio areas.<sup>184</sup>

A whole of community head contract was recommended by the Royal Commission into Aboriginal Deaths into Custody as a key measure for addressing ineffective delivery of services and inflexible funding arrangements that impedes development in Indigenous communities.

#### **Text Box 3.8: Royal Commission into Aboriginal Deaths in Custody<sup>185</sup>**

##### **Recommendation 190:**

That the Commonwealth Government, in conjunction with the State and Territory Governments, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations and also implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.

181 Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

182 Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

183 J Dwyer, K O'Donnell, J Lavoie, U Marlina and P Sullivan, *The Overburden Report: Contracting for Indigenous Health Services*, Cooperative Research Centre for Aboriginal Health (2009). At [http://www.craah.org.au/publications/downloads/overburden%20report\\_FINAL.pdf](http://www.craah.org.au/publications/downloads/overburden%20report_FINAL.pdf) (viewed 14 September 2010).

184 J Dwyer, K O'Donnell, J Lavoie, U Marlina and P Sullivan, *The Overburden Report: Contracting for Indigenous Health Services*, Cooperative Research Centre for Aboriginal Health (2009), p 53. At [http://www.craah.org.au/publications/downloads/overburden%20report\\_FINAL.pdf](http://www.craah.org.au/publications/downloads/overburden%20report_FINAL.pdf) (viewed 14 September 2010).

185 Royal Commission into Aboriginal Deaths in Custody, *National Report Volume 4*, section 27.3. At <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol4/8.html> (viewed 6 September 2010).

**Recommendation 191:**

That the Commonwealth Government, in conjunction with the State and Territory Governments, develop means by which all sources of funds provided for, or identified as being available to Aboriginal communities or organisations wherever possible be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds.

The Coordinator General raised concerns about the difficulties caused by inflexible funding arrangements. This has been recognised by the Australian Government in creating a \$46 million Remote Service Delivery Flexible Funding Pool.<sup>186</sup> This flexible funding allows governments to respond quickly to priority projects in the communities.

I welcome the Flexible Fund to allow urgent community priority programs to cut through inflexible funding arrangements that might otherwise thwart them. This is a clear indication of the government's willingness to move beyond traditional ways of funding. However, I am concerned that the culture of government is improved as a result of this new approach. We need to guarantee that unnecessary red tape and the burden of bureaucratic process is minimised, as much as possible, to ensure that the various grant processes are flexible and straightforward enough to guarantee programs are responsive to community needs and aspirations. An example of bureaucratic burdens are the difficulties associated with the supply of adequate housing for staff running newly funded services or programs in remote communities. Without housing, these positions go unfilled and the services cannot be delivered. In order for funding process to be successful, decision-making about service delivery and the allocation of funding must be shared with the local community.

At this stage, the \$46 million Flexible Fund is for discretionary projects that are managed by the Australian Government and much of the project funding still comes from different government departments at the state and federal levels. What is required is a consolidation of funding from all government departments by geographic location.

The Coordinator General supports a pooled funding approach in remote communities, that is 'a whole of community head contract which aggregates funding by location rather than program'.<sup>187</sup> A head or master contract with pooled funding would centralise funding in a way that would support local decision-making control. Rather than funds being distributed by government departments based on the priorities of departments, pooled funds are located in communities to be responsive to local needs. In response to the Coordinator General, COAG has stated that this type of funding is 'an option that can be considered'.<sup>188</sup>

---

186 The Hon K Rudd MP, Prime Minister, The Hon J Gillard MP, Deputy Premier, Minister for Education, Minister for Workplace Relations, The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, The Hon N Roxon MP, Minister for Health and Ageing, The Hon W Snowden MP, Minister for Indigenous Health, Rural and Regional Health & Regional Services Delivery, 'Flexible funding pool for Remote Service Delivery' (Media Release, 11 February 2010). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/print/jm\\_flexible\\_funding\\_pool\\_11february2010.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/print/jm_flexible_funding_pool_11february2010.htm) (viewed 12 May 2010).

187 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 103. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

188 Council of Australian Governments, Working Group on Indigenous Reform, *Progress Status Report: Addressing the Recommendations of the First Six Monthly Report of the Coordinator-General for Remote Indigenous Services* (2010), p 17. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2010-04-19/docs/WGIR\\_progress\\_status\\_report.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2010-04-19/docs/WGIR_progress_status_report.pdf) (viewed 22 September 2010).

The Senate Select Committee on Regional and Remote Indigenous Communities support the idea of a head or master contract. In the Committee's *Fourth report 2010* it recommended that COAG 'expedite' implementation of more 'flexible funding approaches which aggregate departmental funding into a master contract' with each Remote Service Delivery Partnership priority location.<sup>189</sup> This reflects the Committees 'long held' view:

... that Indigenous communities are best placed in determining their own priorities for funding community infrastructure. This pool of funding responds to the specific needs of individual communities. The committee considers that it is important to ensure that there are high levels of community consultation prior to delivery of services or infrastructure in regional and remote Indigenous communities.<sup>190</sup>

To a large extent, the Fitzroy Futures Fund was established to address the problem of piecemeal funding, poor service delivery and community engagement. The Fitzroy Futures Fund is committed to a framework that will pool funding and provide more consistency in the funding cycles and more community control over service and program delivery. At this stage the Fund is very small at \$2.5 million. It is hoped that in the future, governments will commit to localised head or master contracts with associated funding. The Fitzroy Futures Fund would then become a significant source of funding for all community infrastructure, service and development requirements.

#### (iv) *Accountability*

Another challenge facing the Remote Service Delivery Partnership is the need to clearly delineate responsibility and accountability between the various levels of government and the community. It is simply not enough to inject greater funding into remote communities and expect improved outcomes.<sup>191</sup> In 2008 Coroner Hope, commented that despite an enormous injection of funding into the Kimberley region<sup>192</sup> 'the living conditions for many Aboriginal people were appallingly bad' which 'constitutes a disaster but no one is in charge of the disaster response'.<sup>193</sup> He specifically questioned where the money had gone.<sup>194</sup>

The monitoring role of the Coordinator General as an independent statutory office holder marks a point of departure from previous approaches to service delivery in remote communities. It provides a necessary additional oversight tool to increase accountability.

Visiting all of the 29 priority communities was one of the first tasks undertaken by the Coordinator General after his appointment. In doing so the Coordinator General engaged with more than 1000 people to discuss and listen to community-level issues

---

189 Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Fourth report 2010* (2010), para 2.219. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2010/report4/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2010/report4/index.htm) (viewed 22 September 2010).

190 Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Fourth report 2010* (2010), para 2.215. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2010/report4/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2010/report4/index.htm) (viewed 22 September 2010).

191 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), p 96. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 12 May 2010).

192 Coroner Hope received evidence that the Western Australian Government was providing \$1.2 billion a year over and above Commonwealth funding, See A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 41.

193 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 23.

194 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 41.

relating to the Remote Service Delivery Partnership.<sup>195</sup> I commend the Coordinator General for his approach. It is necessary for him to be exposed to the first-hand experiences, including both the challenges and opportunities, of each priority location. This provides community members with the chance to directly raise their concerns and aspirations at a high level and to be directly involved in the evaluation of the Remote Service Delivery Partnership arrangement.

Targeted monitoring is essential to move the Remote Service Delivery Partnership from rhetoric into reality. The Coordinator General reports biannually to the Minister for Indigenous Affairs on the progress of the Remote Service Delivery Partnership.<sup>196</sup> It has been a welcome practice for the Minister to release these reports to the public. The Coordinator General also produces an annual report that is tabled in Parliament, and subsequently made publicly available.<sup>197</sup> This regular independent public reporting process is a clear departure from the previous approaches.<sup>198</sup>

The reporting process is influencing the roll out of the Remote Service Delivery Partnership. The creation of the Remote Service Delivery Flexible Funding Pool was a direct response to a recommendation of the Coordinator General. COAG also responded to a recommendation from the Coordinator General's first report. In their April 2010 Communiqué, COAG agreed to amend the National Partnership Agreement to recognise the role that local or municipal government plays in the delivery of services. This role will now be captured in the Local Implementation Plans.<sup>199</sup>

I am concerned that the effectiveness of the Coordinator General's role is constrained by resourcing. The Coordinator General advised that his office can monitor effectively at the jurisdictional level. Senior Advisor networks and regular reports provide a good overview of what is being delivered in the states and the Northern Territory. However, a lack of resources means that the Coordinator General is constrained from 'getting out on the ground' as frequently as is necessary to monitor and evaluate the implementation and effectiveness of these arrangements.<sup>200</sup>

Given the unprecedented investment into the Remote Service Delivery Partnership, it is essential that monitoring and evaluating is comprehensive and targeted. The Coordinator General should be able to regularly visit communities as well as receive reports on their progress.

### 3.5 Concluding observations on the Fitzroy experience

#### Section 3.1 Community-led alcohol restrictions in the Fitzroy Valley

The strategy to address the problem of alcohol in the Fitzroy Valley had some important features:

---

195 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009). At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

196 *Coordinator-General for Remote Indigenous Services Act 2009* (Cth), s 15.

197 *Coordinator-General for Remote Indigenous Services Act 2009* (Cth), s 28.

198 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2005), p 193. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport05/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport05/index.html) (viewed 12 May 2010).

199 Council of Australian Governments, *Communiqué – 19-20 April 2010* (2010). At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2010-04-19/index.cfm?CFID=500159&CFTOKEN=79634472](http://www.coag.gov.au/coag_meeting_outcomes/2010-04-19/index.cfm?CFID=500159&CFTOKEN=79634472) (viewed 22 April 2010).

200 The Office of the Coordinator General for Remote Indigenous Services, Correspondence to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 21 July 2010.

- A significant portion of the community at the women's bush camp reached agreement that there was a problem that needed addressing.
- The campaigners sought the support and endorsement of the elders and the local community leadership before taking action to restrict alcohol.
- Key government partners were engaged but the process remained community driven.
- The restrictions were initially confined to a six month trial period and extended only after evaluation, consultation and establishing evidence of its positive impacts.
- The approach was reviewed after the trial period and the communities were able to express their responses to the alcohol restrictions.

### **Section 3.2 Fitzroy Futures Forum: Local governance and local voices**

- The Fitzroy Futures Forum was formed when community leaders identified a need for a platform for communication between the local communities and government service providers.
- Trusting relationships were built between the communities and government representatives over time.
- The Fitzroy Futures Forum offers residents an opportunity to share their views on the future of the Valley and acts as a two-way information exchange that gives voice to local concerns and informs the progress of projects and programs.
- The Fitzroy Futures Forum is the entry point for any service coming into the Fitzroy Valley.
- The Fitzroy Futures Forum is building community capacity and decision-making power in awarding grants for community projects.
- Residents are concerned that the Remote Service Delivery Partnership may overwhelm the Fitzroy Futures Forum. They are also concerned about the future of the Forum given that its funding is due to expire in 2011.

### **Section 3.3 A community approach to Fetal Alcohol Spectrum Disorder**

- The Fitzroy Valley communities considered that Fetal Alcohol Spectrum Disorders (FASD) was an area of concern because of its genuine threat to the health and well-being of local children, its threat to the preservation of culture and the damage it would cause to future generations.
- The FASD project is an example of a community-led collaborative process to address a highly sensitive community identified issue of concern.
- A strategy to address FASD was developed by local community leaders. The lead partner is the Nindilingarri Cultural Health Service at Fitzroy Crossing. Other key partners are The George Institute for Global Health, The Sydney Medical School of the University of Sydney and paediatricians working in the region.
- Nindilingarri Cultural Health Service is the lead agency with responsibility to work with partners to develop the FASD strategy design.
- The Fitzroy Futures Forum keeps the communities informed about all work on FASD and provides an opportunity for local people to have input into the project and provide consent and feedback at key points of its progress.

- Comprehensive community consultations demonstrated widespread community support for a FASD prevalence study.
- The FASD prevalence study will form a key component of the evidence base to advocate for funding and resources to implement remedial projects to address and prevent FASD.
- The FASD prevalence study is a community led model for project development, engagement and consent processes.
- Careful investment in communication and consent processes ensured that 95% of families in the Fitzroy Valley with children aged seven and eight years consented to participate in the study.

#### **Section 3.4 The challenges ahead in governance**

- The National Partnership Agreement on Remote Service Delivery is an opportunity for governments to address past problems impeding coordinated service delivery in remote Australia.
- The coordination of services in remote Australia has been a perennial problem for governments. Poor service coordination manifests in red tape, including overly complex reporting processes and short-term funding.
- The challenge for governments is to reform their practices so that they work in collaboration with remote communities.
- The monitoring role of the Coordinator General for Remote Indigenous Services marks a clear point of departure from previous whole-of-government approaches to service delivery in remote Aboriginal and Torres Strait Islander communities.
- Evidence indicates that effective coordination of services does not occur as the result of whole-of-government processes and agreements.
- Addressing workforce issues is a necessary component of any effective engagement framework with Aboriginal and Torres Strait Islander peoples.
- A head contract that centralises funding to a location and devolves decision-making to a local level could address ineffective delivery of services and inflexible funding arrangements.
- Effective engagement at the local level is essential for the development and delivery of policies and services. The establishment of local government offices and the development of Local Implementation Plans are insufficient in themselves. Community involvement is crucial to success.
- A governance structure is required to bring community and government together in dialogue and cooperation.
- The Fitzroy Futures Forum is an example of a governance structure that brings the communities and government together in one forum to identify local needs and to develop local priority action.

## 3.6 Conclusion

Four years ago, I visited the Fitzroy Valley. My perspective as an outsider was that these communities, like many remote Indigenous communities, had a lot of issues and needed a lot of support to address them. In researching and preparing to write this Chapter, I again visited the Fitzroy Valley in July and August 2010. As I drove into Fitzroy Crossing I noticed significant change since my previous visit.

This time, I witnessed communities with strong leadership that were striving for a better future. You could see the difference in the communities. People weren't hanging around the streets, which was the case last time I was in Fitzroy Crossing. It was even more remarkable when I went for a meal at one of the two licensed premises in the town. The locals who were there, both Aboriginal and non-Aboriginal, had a sense of calmness that was not there when I last visited. In my meetings with local people I noticed they were now talking about the future of Fitzroy. People were engaged in the wellbeing of the place.

The Remote Service Delivery Partnership offers an opportunity for governments to consolidate these gains made in the Fitzroy Valley communities. In order to do this, governments must reform the way they do business in remote Australia. Government agencies and service providers will be most effective if they develop service models in collaboration with local communities. When governments take unilateral control, Aboriginal and Torres Strait Islander peoples are inhibited from becoming agents of change.

The recent experiences of the Fitzroy Valley are testimony to the fact that positive change can occur when communities are agents of their own change. Government would do well to take the lessons of the Fitzroy experience in developing national engagement strategies that filter down through processes such as COAG, and are implemented at regional and local levels. The active participation of those who are directly affected by government policies and legislation must be facilitated at all stages of the development of these processes to ensure that they are targeted and appropriate.

In the Fitzroy Valley, the Fitzroy Futures Forum is the entry point for engagement. It funnels everything into a community controlled space where local people are at the table with government decision-makers.

The Forum allows Aboriginal people to identify their priorities for action, and to be actively involved at the earliest possible stage in any policy design process. The benefits of this are evident in the success of the alcohol restrictions and the FASD project to address alcohol related harm.

Earlier in this Chapter, I noted that the Fitzroy Valley experience offers an alternative process to address social crisis that is in contrast with the NTER. That alternative is community empowerment, community control and genuine engagement. The Review of the NTER stated:

Robust frameworks, adequate resources, functional governance and professional capabilities are necessary — *but without the genuine engagement and active participation of the local community, deep seated change will not be achieved.* It must be nurtured within the community. That is the lesson of the Intervention.<sup>201</sup>

---

201 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 11. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010) (emphasis added).



This is also the lesson of the Fitzroy Valley. It is the lesson that should inform the roll out of the Remote Service Delivery Partnership and other government approaches to service delivery in Indigenous communities.

The story of the Fitzroy Valley is a story of how strong local leadership can drive communities to deal with the most sensitive and intractable issues on their own terms.

This is a story of hope.

Its exciting being in Fitzroy Crossing right now. I'm working with Indigenous people across the whole Valley, male, female and families as well, young people as well out in the schools. And I know when I look at those little kids... they are going to inherit this change. They are going to grow up in a community and start its healing process, its doing it on its own terms, its facing its own histories, and with this extraordinary effort by all, is going to face a much better future.<sup>202</sup>

### Recommendations

- 3.1 That the Australian and Western Australian Governments respond to the priorities identified by the Fitzroy Futures Forum. Further, that those responses should be made with and through mechanisms agreed by the Fitzroy Futures Forum.
- 3.2 That the Australian and Western Australian Governments provide immediate funding to drug and alcohol services, mental health services, rehabilitation services and law and culture programs in the Fitzroy Valley.
- 3.3 That the Australian and Western Australian Governments provide ongoing funding and support for the Fitzroy Futures Forum. Further, that the roll out of the Council of Australian Governments Remote Service Delivery Partnership work within this established community governance framework.
- 3.4 That the Australian Government provide adequate resources to the Coordinator General for Remote Indigenous Services to enable him to fulfil his statutory responsibilities in the 29 priority communities.
- 3.5 That the Australian Government work with Aboriginal and Torres Strait Islander peoples to develop a national engagement framework that is consistent with the minimum standards affirmed in the *United Nations Declarations on the Rights of Indigenous Peoples*. Further, that the Australian Government commit to using this framework to guide the development of consultation processes on a case-by-case basis in partnership with the Aboriginal and Torres Strait Islander peoples that may be affected by a proposed legislative or policy measure. This framework will also require the development of regional and local engagement plans.

202 C Clarke, former Drug and Alcohol Counsellor, Kimberley Mental Health and Drug Service, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 17:51.

- 3.6 That the Australian and state/territory governments implement necessary reforms to both their structures and workforce to ensure they have the capacity to engage effectively with Aboriginal and Torres Strait Islander peoples. These reforms should include:
- (i) The introduction of national uniform legislation to mandate the use of *Identified Positions/Criteria* for all positions in the public service that have any involvement with Aboriginal and Torres Strait Islander peoples, organisations and communities.
  - (ii) That relevant officers have the appropriate skills and cultural competency to work with Aboriginal and Torres Strait Islander peoples and communities.
  - (iii) That targeted education and training programs are developed with accredited training providers to facilitate the development of appropriate skills and cultural competency.
- 3.7 That the Australian Government accelerates efforts to consolidate and streamline programs for Aboriginal and Torres Strait Islander communities with an aim to ensure:
- (i) That funding grant programs are simplified and are pooled where multiple grants come from multiple government entities.
  - (ii) That local communities have certainty of long term core funding.
  - (iii) A greater role in planning and decision-making over funding at the community level.
  - (iv) Greater flexibility to respond to local needs.
- 3.8 That the central role of effective governance structures is acknowledged by governments and respected as a form of community empowerment. Where effective governance structures and processes are in place these should form the basis of government engagement with communities. Where governance structures and processes require further development communities and organisations should be appropriately supported in this process.
- 3.9 That community governance structures and processes should be developed by Aboriginal and Torres Strait Islander communities and appropriately supported by governments, with the aim of empowering them to take control of their own identified issues and aspirations. Communities, in engaging both internally and externally, should be guided by the *United Nations Declaration on the Rights of Indigenous Peoples* in exercising the right to self-determination; the principle of free, prior and informed consent; the right to participate in decision-making; and good faith.

# Appendix 1:

## Acknowledgments

.....

The Aboriginal and Torres Strait Islander Social Justice Commissioner thanks the following people and organisations for their assistance in preparing the *Social Justice Report 2010*.

Grant Akesson Manager Community Development	Drug and Alcohol Office (WA)
Emily Carter CEO	Marninwarntikura Women's Resource Centre
Maureen Carter Chair	Nindilingarri Cultural Health Services
Elizabeth Elliot Professor	Discipline of Paediatrics and Child Health, Sydney Medical School
Brian Gleeson Coordinator General	Office of the Coordinator General for Remote Indigenous Services
Rob Heferen Deputy Secretary	Department of Families, Housing, Community Services and Indigenous Affairs
Janet Hunt Fellow	Centre for Aboriginal Economic Policy Research, ANU
Steve Kinnane	Notre Dame University, Australia
Jane Latimer Senior Research Fellow	The George Institute for Global Health
Krisma May Senior Project Officer	Department of Indigenous Affairs (WA)
Frances Morphy Fellow	Centre for Aboriginal Economic Policy Research, ANU
Rhonda Murphy Community Consultant	Fitzroy Futures Forum
June Oscar CEO	Marninwarntikura Women's Resource Centre

## Social Justice Report 2010

---

Howard Pedersen  
Research Officer

Kimberley Institute

---

Geoffrey Richardson

Department of Families, Housing,  
Community Services and Indigenous  
Affairs

---

Joe Ross

Community member, Fitzroy Valley

---

Diane Smith

Centre for Aboriginal Economic Policy  
Research, ANU

---

Tony Walley

Department of Justice (WA)

---

George Williams  
Anthony Mason Professor

University of New South Wales

---

# Appendix 2:

## Recommendations from the *Social Justice Report 2009*<sup>1</sup>

.....

In accordance with the functions set out in section 46C(1)(a) of the *Australian Human Rights Commission Act 1986* (Cth), this report includes 4 recommendations on justice reinvestment to reduce Indigenous over-representation in the criminal justice system, 7 recommendations for the protection of Indigenous languages and 1 recommendation for sustaining Aboriginal homeland communities.

### Chapter 2: Justice reinvestment

**Recommendation 1:**

That the Australian Government, through COAG, set criminal justice targets that are integrated into the Closing the Gap agenda.

**Recommendation 2:**

That the Standing Committee of Attorneys General *Working Party* identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term.

**Recommendation 3:**

That the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add justice reinvestment as a key strategy in the social inclusion agenda.

**Recommendation 4:**

That all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons. That a percentage of funding that is targeted to prison beds be diverted to trial communities where there are high rates of Indigenous offenders.

<sup>1</sup> T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2009), pp xi-xiii. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html) (viewed 19 November 2010).

## Chapter 3: Indigenous languages

In order to implement Article 13 of the *UN Declaration on the Rights of Indigenous Peoples* and in recognition that the Australian Government has a strategic role in Indigenous language preservation, that the Australian Government commit to the following:<sup>2</sup>

<p><b>Recommendation 5:</b> Immediately fund a national working group with the task of establishing a national Indigenous languages body as per the commitment of <i>Indigenous Languages – A National Approach</i>.<sup>3</sup></p>
<p><b>Recommendation 6:</b> Commit to the development of a national Indigenous languages body with functions and responsibilities similar to those of the Māori Language Commission.</p>
<p><b>Recommendation 7:</b> Utilise the expertise of the national body to assess the required resources for critically endangered languages and commit these resources immediately.</p>
<p><b>Recommendation 8:</b> Agree to resource an ongoing plan of action for the preservation and promotion of Indigenous languages as recommended by the national Indigenous languages body.</p>
<p><b>Recommendation 9:</b> Become a signatory to the <i>Convention for the Safeguarding of the Intangible Cultural Heritage</i> (2003).</p>
<p><b>Recommendation 10:</b> Through the Council of Australian Governments (COAG), develop agreements with all governments to ensure consistency and compliance with Australia's <i>Indigenous Languages – A National Approach</i>.</p>
<p><b>Recommendation 11:</b> Commence a process to recognise Indigenous languages in the preamble of Australia's Constitution with a view to recognising Indigenous languages in the body of the Constitution in future.</p>

2 *UN Declaration on the Rights of Indigenous Peoples* 2007, art 13. 1: Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. At <http://iwgja.synkron.com/graphics/Synkron-Library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf> (viewed 25 September 2009).

3 Australian Government Department of Environment, Water, Heritage and the Arts, *Indigenous Languages – A National Approach. The importance of Australia's Indigenous languages*. At [http://www.arts.gov.au/indigenous/languages\\_policy](http://www.arts.gov.au/indigenous/languages_policy) (viewed 3 September 2009).

## Chapter 4: Sustaining Aboriginal homeland communities

**Recommendation 12:**

In order to implement the *UN Declaration on the Rights of Indigenous Peoples*, particularly Articles 3, 11, 12, 20 and 21, that the Australian and Northern Territory Governments commit to:

- Review the *Working Future* policy with the active participation of representative leaders from homeland communities
- Develop and implement future homeland policies with the active participation of leaders from homeland communities and
- Provide funding and support for homeland communities in all states and territories through the COAG National Indigenous Reform Agreement and associated National Partnership Agreements.





# Appendix 3:

## Chronology of events relating to the administration of Indigenous affairs, 1 July 2009 – 30 June 2010

.....

Date	Event/summary of issue
<p><b>1 July 2009</b> <i>\$1 billion allocated for Indigenous health programs (2009–2010)</i></p>	<p>The Australian Government allocated approximately \$1 billion for Indigenous health programs in 2009–2010. The funds were allocated to meeting health outcomes agreed by the Council of Australian Governments (COAG), commitments in the Northern Territory and a series of other investments in Indigenous health.<sup>1</sup></p>
<p><b>1 July 2009</b> <i>New Indigenous employment services commenced</i></p>	<p>The Australian Government allocated \$202 million to deliver employment services for Indigenous peoples through the reformed Community Development Employment Projects (CDEP) Program, the Community Support Service and the Indigenous Employment Program (IEP).<sup>2</sup></p>
<p><b>1 July 2009</b> <i>Indigenous Employment Program panels established</i></p>	<p>Indigenous Employment panels have been established by the Australian Government to boost employment opportunities for Indigenous people and support enterprises which employ Indigenous workers.<sup>3</sup></p>

- 1 Department of Health and Ageing, 'Health Care Boost for Indigenous Australians' (Media Release, 1 July 2009). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-ws-ws006.htm?OpenDocument&yr=2009&mth=7> (viewed 5 May 2010).
- 2 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Greater employment opportunities for Indigenous Australians' (Media Release, 1 July 2007). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/employ\\_opportunities\\_indigenous\\_aust\\_01jul09.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/employ_opportunities_indigenous_aust_01jul09.aspx) (viewed 4 May 2010).
- 3 Senator The Hon M Arbib, Minister for Employment Participation, 'Tender results for panels under Indigenous Employment Program' (Media Release, 1 July 2009). At [http://www.deewr.gov.au/Ministers/Arbib/Media/Releases/Pages/Article\\_090701\\_162643.aspx](http://www.deewr.gov.au/Ministers/Arbib/Media/Releases/Pages/Article_090701_162643.aspx) (viewed 26 May 2010).

Date	Event/summary of issue
<p><b>2 July 2009</b> <i>COAG agreement to close the gap on Indigenous disadvantage</i></p>	<p>The Council of Australian Governments agreed to:</p> <ul style="list-style-type: none"> <li>▪ a move towards national licensing arrangements for stores in remote Indigenous communities</li> <li>▪ strict reporting requirements and timelines for states and territories, to measure progress towards closing the gap</li> <li>▪ investments in educational funding towards improving educational outcomes for Indigenous Australians.<sup>4</sup></li> </ul>
<p><b>2 July 2009</b> <i>'Overcoming Indigenous Disadvantage: Key Indicators 2009' report released</i></p>	<p>The Productivity Commission's report, <i>Overcoming Indigenous Disadvantage: Key Indicators 2009</i> showed that the gap between Indigenous and non-Indigenous Australians remained high against most measurements of social, economic and personal well-being. While there had been improvements in some areas, the progress in other areas had been limited. Some indicators, such as involvement with the criminal justice system, showed deterioration.<sup>5</sup></p>
<p><b>3 July 2009</b> <i>Partnership agreement for East Kimberley development package signed</i></p>	<p>The Australian Government and the West Australian Government signed a partnership agreement for the East Kimberley development package. Under the agreement, the Commonwealth allocated \$91 million to five priority areas: health infrastructure, education and training, social housing, transport infrastructure and community infrastructure.<sup>6</sup></p>
<p><b>29 July 2009</b> <i>Alice Springs town camps sign a 40-year sub-lease</i></p>	<p>The Alice Springs town camp housing associations and the Tangentyere Council signed a 40-year sub-lease with the Australian Government. The lease was a condition of the \$138 million in funding to improve housing and services in Alice Springs.<sup>7</sup></p>

4 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Closing the Gap between Indigenous and non-Indigenous Australians' (Media Release, 2 July 2009). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing\\_the\\_gap\\_02july09.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_the_gap_02july09.htm) (viewed 27 April 2010).

5 Productivity Commission, 'Overcoming Indigenous Disadvantage: Key Indicators' (Media Release, 2 July 2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009/media-release> (viewed 30 April 2010).

6 The Hon K Rudd MP, Prime Minister, 'Governments sign agreement for East Kimberley' (Media Release, 3 July 2009). At <http://www.pm.gov.au/node/5063> (viewed 30 April 2010).

7 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Agreement on Alice Springs Transformation Plan' (Media Release, 29 July 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/alice\\_springs\\_transformation\\_plan\\_29jul09.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/alice_springs_transformation_plan_29jul09.aspx) (viewed 11 May 2010).

Date	Event/summary of issue
<p><b>9 August 2009</b> <i>New Indigenous languages policy announced</i></p>	<p>The Australian Government's national Indigenous language policy was announced, with a focus on:</p> <ul style="list-style-type: none"> <li>▪ bringing national attention to Indigenous languages</li> <li>▪ encouraging the use of critically endangered languages</li> <li>▪ making sure that in areas where Indigenous languages are being spoken fully and passed on, government recognises these languages when it interacts with Indigenous communities</li> <li>▪ helping restore the use of rarely spoken or unspoken Indigenous languages</li> <li>▪ supporting the teaching and learning of Indigenous languages in Australian schools.<sup>8</sup></li> </ul>
<p><b>12 August 2009</b> <i>Dilak Provincial Authority formed</i></p>	<p>Indigenous leader Galarrwuy Yunupingu announced the formation of the Dilak Provincial Authority, which represents 12 000 Yolngu people. The Authority called for the Northern Territory Emergency Response legislation to be repealed as a matter of urgency and for Indigenous peoples to be able to use their resources for their own advancement. Galarrwuy Yunupingu also urged Prime Minister Kevin Rudd to honour his pledge to recognise Indigenous Australians as the first peoples of the country in the Australian Constitution.<sup>9</sup></p>
<p><b>17–28 August 2009</b> <i>UN Special Rapporteur on indigenous people mission to Australia</i></p>	<p>The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Professor James Anaya, conducted an official mission to Australia.<sup>10</sup></p>
<p><b>27 August 2009</b> <i>Model for a National Indigenous Representative Body proposed</i></p>	<p>The Aboriginal and Torres Strait Islander Social Justice Commissioner presented the report, <i>Our future in our hands</i>, to the Australian Government.</p> <p>The report outlines a proposed model for a National Indigenous Representative Body as developed by the Steering Committee.</p> <p>The report proposes that the representative body: be independent of government; have an equal number of men and women in leadership positions; and rely on strict ethical standards.</p> <p>The model proposes that there be a selection process for delegate positions on the three-chambered National Congress and a second selection process to become a National Executive member.</p>

8 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for the Environment Heritage and the Arts, 'New national approach to preserve Indigenous languages' (Joint Media Release, 9 August 2009). At [http://www.alrc.nsw.gov.au/default.aspx?nav\\_id=217](http://www.alrc.nsw.gov.au/default.aspx?nav_id=217) (viewed 11 May 2010).

9 'NT Intervention creating misery: Yunupingu', ABC Indigenous News Online, 12 August 2009. At [http://www.internationalbenchmarking.org/news/stories/2009/08/12/2653839.htm?site=indigenous&topic=lat\\_est](http://www.internationalbenchmarking.org/news/stories/2009/08/12/2653839.htm?site=indigenous&topic=lat_est) (viewed 8 June 2010).

10 J Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, as he concludes his visit to Australia* (2009). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=53&LangID=E> (viewed 8 June 2010).

Date	Event/summary of issue
<p><b>27 August 2009</b> (continued) <i>Model for a National Indigenous Representative Body proposed</i></p>	<p>The body should be a private company limited by guarantee and funded by the Australian Government on a recurrent basis for an initial five-year period, subject to negotiation thereafter. The report recommended that the body be granted Deductible Gift Recipient status as a matter of urgency to enable the body to raise corporate support and donations.<sup>11</sup></p>
<p><b>28 August 2009</b> <i>Best Practice Guidelines endorsed at Native Title Ministers' Meeting</i></p>	<p>Federal, state and territory Native Title Ministers endorsed the <i>Guidelines for Best Practice in Flexible and Sustainable Agreement Making</i>. The Guidelines aim to provide practical guidance to governments on the behaviours, attitudes and practices that can achieve the efficient resolution of native title claims.<sup>12</sup></p>
<p><b>30 August 2009</b> <i>Indigenous Young People, Crime and Justice Conference</i></p>	<p>The Indigenous Young People, Crime and Justice Conference was hosted by the Australian Institute of Criminology in partnership with the NSW Commission for Children and Young People, the NSW Department of Justice and Attorney General and the Australian Human Rights Commission.</p> <p>The conference discussed effective strategies to tackle the over-representation of Indigenous young people in the criminal justice system. The Aboriginal and Torres Strait Islander Social Justice Commissioner emphasised the importance of focusing on prevention and diversion, rather than detention, in dealing with crime.<sup>13</sup></p>
<p><b>31 August 2009</b> <i>Review Report on the NT Strategic Indigenous Housing and Infrastructure Program (SIHIP) released</i></p>	<p>The review report for the Strategic Indigenous Housing and Infrastructure Program (SIHIP) found that while the program is sound in many respects, changes need to be made to ensure that the program meets the targeted figures of new houses and housing improvements.</p> <p>The Australian and Northern Territory Governments accepted all findings and recommendations of the report.<sup>14</sup></p>

11 Australian Human Rights Commission, 'Radical new approach announced for Aboriginal and Torres Strait Islander Affairs' (Media Release, 27 August 2009). At [http://www.humanrights.gov.au/about/media/media\\_releases/2009/80\\_09.html](http://www.humanrights.gov.au/about/media/media_releases/2009/80_09.html) (viewed 29 April 2010).

12 Native Title Ministers' Meeting, *Communiqué* (28 August 2009). At [http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2009\\_ThirdQuarter\\_28August2009-Communique-NativeTitleMinistersMeeting](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2009_ThirdQuarter_28August2009-Communique-NativeTitleMinistersMeeting) (viewed 10 May 2010).

13 Australian Human Rights Commission, 'Getting Indigenous youth out of the criminal justice system' (Media Release, 30 August 2009). At [http://www.humanrights.gov.au/about/media/media\\_releases/2009/82\\_09.html](http://www.humanrights.gov.au/about/media/media_releases/2009/82_09.html) (viewed 24 May 2010).

14 The Hon J Macklin MP, Minister of Families, Housing, Community Services and Indigenous Affairs, 'Improving Indigenous Housing in the NT' (Media Release, 31 August 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/sihip\\_31aug09.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/sihip_31aug09.aspx) (viewed 11 May 2010).

Date	Event/summary of issue
<p><b>10 September 2009</b> <i>Three Indigenous communities in the NT signed 40-year lease agreements under SIHIP</i></p>	<p>The Northern Territory communities of Maningrida, Gunbalanya and Wadeye signed forty-year leases with the Australian Government.</p> <p>The signing of the leases was a condition of the agreement to construct new houses in these communities. 105 houses will be built in Wadeye, 109 houses in Maningrida and 62 houses in Gunbalanya.<sup>15</sup></p>
<p><b>18 September 2009</b> <i>Native Title Amendment Act 2009 (Cth) commenced</i></p>	<p>The <i>Native Title Amendment Act 2009</i> (Cth) commenced. The amendments included:</p> <ul style="list-style-type: none"> <li>▪ giving the Federal Court a central role in managing native title claims</li> <li>▪ enabling the Court to rely on a statement of facts agreed between parties</li> <li>▪ allowing the Court to make orders about matters beyond native title</li> <li>▪ allowing the Court to use recent changes in evidence laws to make it easier to receive evidence of traditional laws and customs.<sup>16</sup></li> </ul>
<p><b>18 September 2009</b> <i>Queensland trial of the School Enrolment and Attendance Measure (SEAM) announced</i></p>	<p>Around 2000 parents receiving income support in the trial sites will be required, if requested, to demonstrate to Centrelink that their children are enrolled in school. The parents will also be required to demonstrate that they are taking reasonable steps to make sure their children attend school regularly. Parents who fail to do so may have their income payments suspended until the problem is resolved.</p> <p>Thirty schools will be involved in this measure across the Logan suburbs of Woodridge, Kingston, Logan Central and Eagleby, and the communities of Doomadgee and Mornington.<sup>17</sup></p>
<p><b>24 September 2009</b> <i>The Aboriginal and Torres Strait Islander Healing Foundation's report accepted by the Australian Government and the Interim Board is established</i></p>	<p>The Aboriginal and Torres Strait Islander Healing Foundation team presented their report <i>Voices from the Campfires: Establishing the Aboriginal and Torres Strait Islander Healing Foundation</i> to the Australian Government.</p> <p>Public consultations to develop a model for the Foundation were held from May to August 2009. The outcomes of the consultations and the recommendations for a model were produced in the report. All of the recommendations were accepted by the Australian Government.</p> <p>The Minister for Families, Housing, Community Services and Indigenous Affairs announced the formation of an Interim Board to work on the establishment of the Foundation, including: drafting its constitution, arranging its incorporation and conducting a national recruitment process to appoint the Foundation's Inaugural Board.<sup>18</sup></p>

- 15 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Leases signed in Maningrida, Gunbalanya & Wadeye' (Media Release, 10 September 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/leases\\_signed\\_10sept09.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/leases_signed_10sept09.aspx) (viewed 14 July 2010).
- 16 Department of Families, Housing, Community Services and Indigenous Affairs, *Native Title Amendment Act 2009 – Information sheet*, [http://www.facs.gov.au/sa/indigenous/progserv/land/Pages/ammend\\_act2009\\_info.aspx](http://www.facs.gov.au/sa/indigenous/progserv/land/Pages/ammend_act2009_info.aspx) (viewed 12 July 2010).
- 17 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Increasing school attendance and enrolment in Queensland' (Media Release, 18 September 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/jm\\_m\\_qldschoolattendance\\_18september2009.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/jm_m_qldschoolattendance_18september2009.aspx) (viewed 11 May 2010).
- 18 Aboriginal and Torres Strait Islander Healing Foundation, *Aboriginal and Torres Strait Islander Healing Foundation*, [http://healingfoundation.org.au/?page\\_id=2](http://healingfoundation.org.au/?page_id=2) (viewed 18 May 2010).

Date	Event/summary of issue
<p><b>28 September 2009</b> <i>Agreement signed for return of the remains of five Indigenous Australians</i></p>	<p>The Australian Government and Leiden University Medical Center (LUMC) signed an agreement for the return from the Netherlands to Australia of the remains of five Indigenous Australians.</p> <p>The remains of two ancestors were to be handed over to two elders of the Bundjalung community in the Northern Rivers region of NSW during a ceremony in Leiden.</p> <p>The remains of three other Indigenous Australians will be returned to the National Museum of Australia in Canberra where further examination will be undertaken to ascertain their origins.<sup>19</sup></p>
<p><b>30 September 2009</b> <i>Aboriginal and Torres Strait Islander Healing Foundation incorporated</i></p>	<p>The Aboriginal and Torres Strait Islander Healing Foundation was incorporated as a private company. It is an Indigenous-controlled organisation established to support community healing initiatives to address the traumatic legacies of forced removal and other past government policies.<sup>20</sup></p>
<p><b>30 September 2009</b> <i>National Human Rights Consultation Report presented to the Attorney-General</i></p>	<p>The National Human Rights Consultation Committee delivered its report to the Attorney-General. In addition to recommending human rights education and a national Human Rights Act, the report recommended:</p> <ul style="list-style-type: none"> <li>▪ A 'statement of impact on Aboriginal and Torres Strait Islander peoples' be provided to the federal Parliament when the intent is to legislate exclusively for those peoples, to suspend the <i>Racial Discrimination Act 1975</i> (Cth) or to institute a special measure.</li> <li>▪ In partnership with Indigenous communities, the Australian Government develop and implement a framework for self-determination, outlining consultation protocols, roles and responsibilities (so that the communities have meaningful control over their affairs) and strategies for increasing Indigenous Australians' participation in the institutions of democratic government.</li> <li>▪ The definition of 'human rights' in the <i>Australian Human Rights Commission Act 1986</i> (Cth) be expanded to include the <i>United Nations Declaration on the Rights of Indigenous Peoples</i>.<sup>21</sup></li> </ul>
<p><b>14 October 2009</b> <i>High Court refuses leave to appeal in FMG Pilbara case</i></p>	<p>The High Court refused special leave to appeal the decision of the Full Federal Court in <i>FMG Pilbara Pty Ltd v Cox</i> (2009) 175 FCR 141.<sup>22</sup></p> <p>The Full Federal Court had found that, regardless of the stage reached in negotiations, all the <i>Native Title Act 1993</i> (Cth) requires is that the parties negotiate in good faith about the doing of the future act during a six month period. Once that time expires, a future act determination can be sought from the National Native Title Tribunal. The Full Federal Court also considered that the obligation to negotiate in good faith had been discharged in this case.</p>

19 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs 'Indigenous remains to be returned from Netherlands' (Media Release, 28 September 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/indigenous\\_remains\\_28sept09.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/indigenous_remains_28sept09.aspx) (viewed 12 July 2010).

20 Aboriginal and Torres Strait Islander Healing Foundation, *Aboriginal and Torres Strait Islander Healing Foundation*, [http://healingfoundation.org.au/?page\\_id=2](http://healingfoundation.org.au/?page_id=2) (viewed 18 May 2010).

21 National Human Rights Consultation Committee, *National Human Rights Consultation Report* (2009). At <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report> (viewed 12 July 2010).

22 See Transcript of proceedings, *Cox v FMG Pilbara Pty Ltd* [2009] HCATrans277 (14 October 2009). At <http://www.austlii.edu.au/au/other/HCATrans/2009/277.html> (viewed 14 October 2010).

Date	Event/summary of issue
<p><b>21 October 2009</b> <i>Native Title Amendment Bill (No. 2) 2009 (Cth) introduced in Parliament</i></p>	<p>The Native Title Amendment Bill (No. 2) 2009 (Cth) was introduced into Parliament. The Bill proposed to create a new future act process to facilitate the construction of public housing and infrastructure in communities on Indigenous-held land.<sup>23</sup></p>
<p><b>22 October 2009</b> <i>Kowanyama consent determination</i></p>	<p>Justice Greenwood of the Federal Court finalised part of the Kowanyama people's claimant application through a consent determination. The determination area covers 2730 square kilometres and includes part of the claim area subject to the Kowanyama Deed of Grant in Trust (DOGIT) and a coastal strip. The Kowanyama people were granted exclusive native title rights over the former area and non-exclusive rights over the latter.</p>
<p><b>23 October 2009</b> <i>International Repatriation Advisory Committee appointed</i></p>	<p>The Australian Government appointed an International Repatriation Advisory Committee. The Committee will give expert advice to the Australian Government on the return of Indigenous remains to Australia from different parts of the world.<sup>24</sup></p>
<p><b>29 October 2009</b> <i>Remote Indigenous Land and Infrastructure Office established in QLD</i></p>	<p>The Queensland Government created the Remote Indigenous Land and Infrastructure Office to accelerate Indigenous housing construction. The Office will deliver infrastructure projects to the communities of Mornington Island, Doomadgee, Aurukun and Hopevale. The Office will negotiate with councils to secure 40-year leases over land.<sup>25</sup></p>
<p><b>30 October 2009</b> <i>National Aboriginal and Torres Strait Islander Social Survey 2008 (NATSISS) released</i></p>	<p>The National Aboriginal and Torres Strait Islander Social Survey 2008 (NATSISS) drew on responses from approximately 10 000 Indigenous Australians. It provides a snapshot of the well-being of the Indigenous population by reporting on Indigenous peoples' educational attainment, work, health and cultural lives.<sup>26</sup></p>
<p><b>6 November 2009</b> <i>National Framework on Indigenous Law and Justice Issues agreed</i></p>	<p>Commonwealth, state and territory governments agreed to a National Framework on Indigenous Law and Justice Issues. The Framework aims to reduce the over-representation of Indigenous peoples in the criminal justice system by focusing on community safety strategies and reducing rates of alcohol and substance-related crime.<sup>27</sup></p>

23 See Parliament of Australia, Parlinfo Search, *Native Title Amendment Bill (No 2) 2009*, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4230%22> (viewed 22 December 2010). The Bill lapsed on 28 September 2010. However legislation in almost identical form was passed on 25 November 2010 (see *Native Title Amendment (No 1) 2010* (Cth)).

24 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'International Repatriation Advisory Committee appointed' (Media Release, 23 October 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/int\\_repartriation\\_comm\\_23oct09.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/int_repartriation_comm_23oct09.aspx) (viewed 11 May 2010).

25 ABC Online, *New office to hasten remote Indigenous housing*, <http://www.abc.net.au/news/stories/2009/10/29/2727185.htm> (viewed 23 April 2010).

26 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey 2008* (2010). At <http://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/4720.0?OpenDocument> (viewed 23 December 2010).

27 The Hon R McClelland MP, Attorney-General, 'Tackling Indigenous Law and Justice Issues' (Media Release, 6 November 2009). At [http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2009\\_FourthQuarter\\_6November2009-](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2009_FourthQuarter_6November2009-) (viewed 29 April 2010).

Date	Event/summary of issue
<p><b>20 November 2009</b> <i>QLD Crime and Misconduct Commission recommended a new Indigenous police command</i></p>	<p>The Crime and Misconduct Commission (CMC) issued its report on policing in Indigenous communities. The review was held in response to the death in custody of Palm Island man Cameron Doomadgee.</p> <p>The CMC recommended the establishment of a new Indigenous police command and greater control at the local level.<sup>28</sup></p>
<p><b>22 November 2009</b> <i>New National Congress of Australia's First Peoples announced</i></p>	<p>The new national Indigenous representative body will be called the National Congress of Australia's First Peoples.</p> <p>This announcement followed confirmation by the Australian Government that it had accepted the recommendations of the Steering Committee's report, <i>Our Future in Our Hands</i>, and had agreed to provide initial funding for the body until December 2013.<sup>29</sup></p>
<p><b>23 November 2009</b> <i>Report on the Northern Territory Emergency Response Redesign Consultations released</i></p>	<p>The Australian Government's report on the <i>Northern Territory Emergency Response Redesign Consultation</i> detailed findings of the consultations conducted by the Government from June to August 2009.</p> <p>Several thousand people attended more than 500 meetings and workshops covering 73 remote Northern Territory communities and town camps. The feedback reflected a broad range of views, including some strong opposition to aspects of the Northern Territory Emergency Response.<sup>30</sup></p>
<p><b>23 November – 4 December 2009</b> <i>UN Special Rapporteur on health visited Australia</i></p>	<p>The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health conducted an official mission to Australia.</p>
<p><b>25 November 2009</b> <i>Jabiru native title claim settled</i></p>	<p>The Australian and Northern Territory Governments and the Mirarr Traditional Owners reached an agreement to recognise Mirarr traditional ownership of land through a grant under the <i>Northern Territory Aboriginal Land Rights Act 1976</i> (Cth), with an immediate 99-year leaseback of the Jabiru township to the Executive Director of Township Leasing. The claim, situated within the world heritage listed Kakadu National Park, was the longest-running native title claim in the Northern Territory.<sup>31</sup></p>

28 M Cornish, ABC News, *CMC recommends new Qld Indigenous policing arrangements*, <http://www.abc.net.au/news/stories/2009/11/20/2748923.htm> (viewed 13 May 2010).

29 Australian Human Rights Commission, 'New National Congress of Australia's First Peoples announced' (Media Release, 22 November 2009). At [http://www.humanrights.gov.au/about/media/media\\_releases/2009/116\\_09.html](http://www.humanrights.gov.au/about/media/media_releases/2009/116_09.html) (viewed 15 July 2010).

30 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Comprehensive consultation on redesigning the Northern Territory Emergency Response' (Media Release, 23 November 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/jm\\_m\\_nterredesign\\_23november2009.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/jm_m_nterredesign_23november2009.aspx) (viewed 4 May 2010).

31 The Hon R McClelland MP, Attorney-General, 'Jabiru Native Title Settlement' (Media Release, 25 November 2009). At [http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2009\\_FourthQuarter\\_25November2009-JabiruNativeTitleSettlement](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2009_FourthQuarter_25November2009-JabiruNativeTitleSettlement) (viewed 29 April 2010).



Date	Event/summary of issue
<p><b>25 November 2009</b> <i>Northern Territory Emergency Response (NTER) reform Bills introduced in Parliament</i></p>	<p>The Australian Government introduced the following Bills in Parliament in order to redesign the Northern Territory Emergency Response (NTER):</p> <ul style="list-style-type: none"> <li>▪ Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 (Cth)</li> <li>▪ Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 (Cth).<sup>32</sup></li> </ul> <p>The Government states that several of the NTER measures have been redesigned so they are:</p> <ul style="list-style-type: none"> <li>▪ improved and strengthened</li> <li>▪ sustainable over the long-term</li> <li>▪ 'more clearly special measures or non-discriminatory within the terms of the <i>Racial Discrimination Act 1975</i>'.<sup>33</sup></li> </ul>
<p><b>26 November 2009</b> <i>Senate Inquiry into Bills to reform of the NTER commenced</i></p>	<p>The Senate Community Affairs Committee commenced its Inquiry into the following Bills:</p> <ul style="list-style-type: none"> <li>▪ Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 (Cth)</li> <li>▪ Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 (Cth)</li> <li>▪ Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 (Cth) [introduced by Senator Siewert].</li> </ul>
<p><b>27 November 2009</b> <i>Alice Springs Town Camp Housing Associations agreed to sub-lease with the Australian Government</i></p>	<p>The Tangentyere Council agreed to the terms and conditions for the sub-lease of their Special Purposes Leases offered by the Australian Government.<sup>34</sup></p>
<p><b>4 December 2009</b> <i>Coordinator General for Remote Indigenous Services' first Six-Month Report released</i></p>	<p>The Coordinator General for Remote Indigenous Services released his first Six-Month Report.<sup>35</sup> The report contained findings on progress being made in delivering essential services to people living in 29 priority Indigenous locations across Australia.</p>

32 Parliament of Australia, *Bills of the Current Parliament*, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/r4265%22> (viewed 12 July 2010).

33 Explanatory Memorandum, Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 (Cth), outline. At <http://www.comlaw.gov.au/comlaw/legislation/bills1.nsf/framelodgmentattachments/40DF878226ED1626CA25767A0005AFF3> (viewed 21 September 2010).

34 Tangentyere Council, 'Tangentyere Welcomes Agreement' (Media Release, 27 November 2009). At <http://www.tangentyere.org.au/news/> (viewed 14 July 2010).

35 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July–November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009). At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

Date	Event/summary of issue
<p><b>7 December 2009</b> <i>COAG agreed to renegotiate Indigenous housing arrangements</i></p>	<p>The Council of Australian Governments (COAG) agreed to the renegotiation of the National Partnership Agreement on Remote Indigenous Housing, with a view to a renegotiated agreement coming into effect by July 2010.</p> <p>The renegotiation will enable a more competitive process for allocation of funding by the Commonwealth for capital works and provide strong incentives for the state governments and the Northern Territory Government to progress the construction of new housing, repairs and maintenance in remote Indigenous communities over the remaining eight years of the National Partnership Agreement.<sup>36</sup></p>
<p><b>17 December 2009</b> <i>Historic Heads of Agreement signed for Noongar native title claims</i></p>	<p>The West Australia Government signed a Heads of Agreement with the South West Aboriginal Land and Sea Council outlining a framework for the resolution of the Noongar People's active native claims.<sup>37</sup></p>
<p><b>18 December 2009</b> <i>Maralinga lands handed back to Traditional Owners</i></p>	<p>The Australian Government handed the Maralinga lands back to the Traditional Owners, 50 years after the British Nuclear Tests program made parts of it uninhabitable. The damage to the lands required many years of extensive rehabilitation work. Under the Maralinga Maintenance Deed, the Australian Government will provide \$6 million for the maintenance and improvement of infrastructure on the lands for community use.<sup>38</sup></p>
<p><b>4 January 2010</b> <i>Ethics Council of the National Congress of Australia's First Peoples appointed</i></p>	<p>The Inaugural Ethics Council consists of six Indigenous members, Mr Tom Calma, Professor Larissa Behrendt, Mr Wesley Enoch, Ms Mary Graham, Ms Nalwarri Ngurruwutthun and Professor Lester Irabinna Rigney.</p> <p>The Ethics Council will be responsible for developing and maintaining standards for the new Congress. The Ethics Council and the Steering Committee will finalise the interim National Executive to lead the organisation through its development phase in 2010.<sup>39</sup></p>

36 The Hon K Rudd MP, Prime Minister and The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Renegotiation of National Partnership Agreement on Remote Indigenous Housing' (Media Release, 7 December 2009). At [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=:group=:;holdingType=:id=:orderBy=:page=:query=AuthorId%3AG6%7CReporterId%3APG6%7CSpeakerId%3APG6%20Author\\_Phrase%3A%22rudd,%20kevin,%20mp%22;querytype=:rec=8;resCount=](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=:group=:;holdingType=:id=:orderBy=:page=:query=AuthorId%3AG6%7CReporterId%3APG6%7CSpeakerId%3APG6%20Author_Phrase%3A%22rudd,%20kevin,%20mp%22;querytype=:rec=8;resCount=) (viewed 30 July 2010).

37 See National Native Title Tribunal, *Agreement begins negotiations*, <http://www.nntt.gov.au/Native-Title-In-Australia/Western-Australia/Pages/South-west.aspx> (viewed 29 September 2010); South West Aboriginal Land and Sea Council, *Negotiations with the West Australia Government*, <http://www.noongar.org.au/talks-government.php> (viewed 29 September 2010).

38 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Maralinga nuclear test site reclaimed after half a century' (Media Release, 18 December 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/maralinga\\_18dec2009.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/maralinga_18dec2009.aspx) (viewed 4 May 2010).

39 Australian Human Rights Commission, 'Inaugural Ethics Council up and running' (Media Release, 4 January 2010). At [http://humanrights.gov.au/about/media/media\\_releases/2010/1\\_10.html](http://humanrights.gov.au/about/media/media_releases/2010/1_10.html) (viewed 20 July 2010).

Date	Event/summary of issue
<p><b>8 February 2010</b>  <i>Wild Rivers (Environmental Management) Bill 2010 [No 1] (Cth) introduced into the House of Representatives</i></p>	<p>The Wild Rivers (Environmental Management) Bill 2010 [No 1] (Cth), a private member's bill, was tabled by the Leader of the Opposition Tony Abbott, in the House of Representatives. The Bill would provide that 'the development or use of native title land in a wild river area cannot be regulated under the relevant Queensland legislation unless the Aboriginal traditional owners of the land agree'.<sup>40</sup> Mr Abbott referred to the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> when introducing the Bill.<sup>41</sup></p>
<p><b>11 February 2010</b>  <i>Ten new Indigenous mothers and babies health services announced</i></p>	<p>The Prime Minister announced \$9.1 million funding for ten new Indigenous mothers and babies health services. These services are in addition to the existing 43 services.<sup>42</sup></p>
<p><b>11 February 2010</b>  <i>Government Ambassador for Business Action appointed</i></p>	<p>The Australian Government appointed Colin Carter as Ambassador for Business Action to encourage private businesses to participate in the economic development of Indigenous communities.</p> <p>The Ambassador will lead the Government's effort to promote Indigenous employment in the private sector.<sup>43</sup></p>
<p><b>12 February 2010</b>  <i>Prime Minister delivered his 'Closing the Gap Report 2010'.</i></p>	<p>The Prime Minister, Kevin Rudd delivered his second Closing the Gap statement to Parliament. The report reviewed progress against the six COAG targets set in 2008 in the areas of life expectancy, mortality rates, education, health and employment.<sup>44</sup></p> <p>The Close the Gap Coalition for Indigenous Health Equality also released its inaugural Shadow Report on the Australian Government's progress towards closing the gap in life expectancy between Indigenous and non-Indigenous Australians.<sup>45</sup></p>

40 Wild Rivers (Environmental Management) Bill 2010 (Cth), proposed section 5.

41 Commonwealth, *Parliamentary Debates*, House of Representatives, 8 February 2010, pp 714-715 (The Hon T Abbott MP, Leader of the Opposition). At <http://www.aph.gov.au/hansard/reps/dailys/dr080210.pdf> (viewed 22 July 2010).

42 The Hon K Rudd MP, Prime Minister, 'More support for Indigenous mums and bubs' (Media Release, 11 April 2010). At <http://www.pm.gov.au/node/6475> (viewed 21 April 2010).

43 The Hon K Rudd MP, Prime Minister, 'New ambassador for business to help Close the Gap' Media Release, 11 February 2010). At <http://www.pm.gov.au/node/6479> (viewed 6 May 2010).

44 The Hon Kevin Rudd MP, Prime Minister, *Closing the Gap – Prime Minister's Report* (2010). At [http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Pages/closing\\_the\\_gap\\_2010.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Pages/closing_the_gap_2010.aspx) (viewed 10 November 2010); Australians for Native Title and Reconciliation, *Close the Gap Prime Minister's 2010 report to parliament*, [http://www.antar.org.au/close\\_the\\_gap\\_prime\\_ministers\\_2010\\_report\\_to\\_parliament](http://www.antar.org.au/close_the_gap_prime_ministers_2010_report_to_parliament) (viewed 19 July 2010).

45 Close the Gap Steering Committee for Indigenous Health Equality, *Shadow Report on the Australian Government's progress towards closing the gap in life expectancy between Indigenous and non Indigenous Australians* (2010). At [http://humanrights.gov.au/social\\_justice/health/index.html](http://humanrights.gov.au/social_justice/health/index.html) (viewed 23 December 2010).

Date	Event/summary of issue
<p><b>17 February 2010</b> <i>Australia's first National Coordinator for Tackling Indigenous Smoking appointed</i></p>	<p>Tom Calma was appointed as the National Coordinator for Tackling Indigenous Smoking. The National Coordinator will lead and mentor the tackling smoking workforce being established under the Australian Government's \$100 million COAG Tackling Smoking initiative to reduce the incidence of tobacco smoking in Indigenous communities.<sup>46</sup></p>
<p><b>23 February 2010</b> <i>Wild Rivers (Environmental Management) Bill 2010 [No 2] (Cth) introduced and referred to Committee</i></p>	<p>The Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Cth) was introduced into the Senate by Nigel Scullion. The Bill is identical to the Bill introduced into the House of Representatives by the Leader of the Opposition, on 8 February 2010.</p> <p>The Senate referred the Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Cth) to the Senate Legal and Constitutional Affairs Legislation Committee.</p>
<p><b>24 February 2010</b> <i>Senate Committee reports on the Native Title Amendment Bill (No 2) 2009 (Cth)</i></p>	<p>The Senate Legal and Constitutional Affairs Legislation Committee recommended that the Bill be amended to include the provision of staff housing as part of the new future acts process. Subject to this recommendation, the Committee recommended that the Bill be passed.<sup>47</sup></p>
<p><b>25 February 2010</b> <i>Queensland Constitution recognises Indigenous peoples as First Peoples</i></p>	<p>Queensland became the second state after Victoria to recognise Indigenous peoples in its Constitution.<sup>48</sup></p>
<p><b>25 February 2010</b> <i>WA Government and Yawuru Traditional Owners signed two ILUAs</i></p>	<p>The Yawuru People signed two Indigenous Land Use Agreements (ILUAs) with the State of Western Australia and the Shire of Broome. These agreements are considered to be the largest native title agreements in Australia.<sup>49</sup></p>
<p><b>26 February 2010</b> <i>National Centre of Indigenous Excellence opened</i></p>	<p>The Prime Minister officially opened the \$50 million National Centre of Indigenous Excellence in Sydney.</p> <p>Created with the support of the Indigenous Land Corporation, the centre provides facilities in sports, education and the arts for up to 5000 young Indigenous people from around Australia every year.<sup>50</sup></p>

46 Department of Health and Aging, 'New National Coordinator to Tackle Indigenous Smoking' (Media Release, 17 February 2010). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr10-ws-ws012.htm> (viewed 15 July 2010).

47 Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Native Title Amendment Bill (No 2) 2009 [Provisions]* (2010), p 33. At [http://www.aph.gov.au/senate/committee/legcon\\_ctte/nativetitle\\_two/report/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/nativetitle_two/report/index.htm) (viewed 28 July 2010).

48 Australian Human rights Commission, 'Recognition in Queensland's Constitution another milestone for reconciliation' (Media Release, 25 February 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/12\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/12_10.html) (viewed 24 May 2010).

49 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Native Title Newsletter*, No 1/2010 (2010), p 15. At [http://www.aiatsis.gov.au/ntru/newsletter.html#janfeb10\[1\].pdf](http://www.aiatsis.gov.au/ntru/newsletter.html#janfeb10[1].pdf) (viewed 15 July 2010).

50 The Hon K Rudd MP, Prime Minister, 'Opening of the National Centre of Indigenous Excellence' (Media Release, 26 February 2010). At <http://www.pm.gov.au/node/6516> (viewed 23 April 2010).

Date	Event/summary of issue
<p><b>1 March 2010</b> <i>Queensland Court of Appeal dismissed appeal in Aurukun case</i></p>	<p>The Queensland Court of Appeal dismissed an appeal by the Aurukun and Kowanyama Aboriginal Shire Councils in relation to amendments made to the <i>Liquor Act 1992</i> (Qld) prohibiting local councils from holding commercial hotel licences.</p> <p>The Court of Appeal held that the Queensland Act does not breach the <i>Racial Discrimination Act 1975</i> (Cth).<sup>51</sup></p>
<p><b>9 March 2010</b> <i>UN Special Rapporteur on Indigenous People's report on Australia released</i></p>	<p>The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people released his report on his mission to Australia.</p> <p>The report commended the Government of Australia for the advancements made in recent years, in particular through its National Apology, its support for the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> and its campaign to improve the living conditions of Indigenous Australians.</p> <p>The report, however, noted that Indigenous peoples continue to be denied effective control of their lands and other resources and Indigenous institutions sometimes suffered disempowerment as a result of high levels of state control.</p> <p>The Special Rapporteur singled out the Northern Territory Emergency Response as a policy that had problematic features from a human rights standpoint. In particular, the Special Rapporteur expressed concern in relation to compulsory income management, compulsory acquisition of Aboriginal land, the assertion of extensive powers by the Commonwealth Government over Aboriginal communities, and alcohol and pornography restrictions in prescribed areas.</p> <p>While the Rapporteur encouraged the Australian Government's efforts in addressing Indigenous disadvantage, he emphasised the need for government initiatives to better embrace the goals of advancing Indigenous self-determination.<sup>52</sup></p>
<p><b>9 March 2010</b> <i>National Aboriginal and Torres Strait Islander Women's Alliance formed</i></p>	<p>The Minister for Indigenous Affairs and Minister for the Status of Women announced the establishment of the National Aboriginal and Torres Strait Islander Women's Alliance at a meeting of 55 Indigenous women leaders in Canberra organised by Oxfam.</p> <p>This alliance of Indigenous women and their organisations from across the country will work with the Australian Government on policy issues to develop a more informed and representative dialogue with the Government.<sup>53</sup></p>

51 *Aurukun Shire Council v CEO Office of Liquor Gaming and Racing in the Department of Treasury* (2010) 237 FLR 369. See also *Morton v Queensland Police Service* (2010) 240 FLR 269.

52 Office of the United Nations High Commissioner for Human Rights, *Australia/Indigenous peoples: development and self-determination to overcome severe disadvantages*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9891&LangID=E> (viewed 2 June 2010).

53 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stronger voice for Indigenous women' (Media Release, 9 March 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indigenous\\_womenvoice\\_9mar2010.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indigenous_womenvoice_9mar2010.aspx) (viewed 10 May 2010).

## Social Justice Report 2010

Date	Event/summary of issue
<p><b>11 March 2010</b> <i>Voluntary Indigenous Australian Art Commercial Code of Conduct opened for signature</i></p>	<p>The Australian Government established the Voluntary Indigenous Australian Art Commercial Code of Conduct. The Code will provide a national set of standards for transactions between agents, artists and dealers in the Indigenous visual arts industry.<sup>54</sup></p>
<p><b>15 March 2010</b> <i>Senate Inquiry on NTER reform Bills, recommended Government Bills be passed</i></p>	<p>The Senate Community Affairs Committee completed its Inquiry into Bills reforming the Northern Territory Emergency Response. The committee received 95 submissions.</p> <p>The Committee recommended that the two Government Bills be passed. Dissenting reports were made by the Coalition Senators and the Australian Greens Senator.<sup>55</sup></p>
<p><b>16 March 2010</b> <i>Two Indigenous scholars selected for Charles Perkins Scholarship to attend Oxford University</i></p>	<p>Two Indigenous scholars were selected to receive the inaugural Charles Perkins Scholarship to attend post-graduate studies at Oxford University.</p> <p>The scholarships honour the contribution of Dr Charles Perkins, the first Indigenous Australian to graduate from university.<sup>56</sup></p>
<p><b>17 March 2010</b> <i>Independent, quality assurance team for SIHIP announced</i></p>	<p>The Australian Government announced that a new independent, expert, quality assurance team will be established to inspect and assess new houses and refurbishments delivered under the Strategic Indigenous Housing and Infrastructure Program (SIHIP) in the Northern Territory.<sup>57</sup></p>
<p><b>18 March 2010</b> <i>Full Federal Court finds in favour of the Bardi and Jawi peoples in WA</i></p>	<p>The Full Federal Court of Australia found in favour of the Bardi and Jawi people in their appeal against the State of Western Australia. The native title claims are over the Dampier Peninsula, the islands in the Buccaneer Archipelago and surrounding offshore areas in the Kimberley region, Western Australia.<sup>58</sup></p>

54 The Hon P Garrett MP, Minister for Environment Protection, Heritage and the Arts, 'Registration opens for Indigenous Australian Art Commercial Code of Conduct' (Media Release, 11 March 2010). At <http://www.environment.gov.au/minister/garrett/2010/mr20100311a.html> (viewed 13 May 2010).

55 Senate Community Affairs Committee, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 [Provisions], Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 [Provisions] and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009*, [http://www.aph.gov.au/Senate/committee/clac\\_ctte/soc\\_sec\\_welfare\\_reform\\_racial\\_discrim\\_09/report/index.htm](http://www.aph.gov.au/Senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/report/index.htm) (viewed 12 July 2010).

56 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Young Indigenous leaders to study at Oxford' (Media Release, 16 March 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indig\\_leaders\\_to\\_study\\_at\\_oxford\\_16mar2010.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indig_leaders_to_study_at_oxford_16mar2010.aspx) (viewed 2 June 2010).

57 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Further improvements to NT Indigenous housing program' (Media Release, 17 March 2009). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/sihp\\_pra\\_17mar10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/sihp_pra_17mar10.aspx) (viewed 11 May 2010).

58 *Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26; Australian Institute of Aboriginal and Torres Strait Islander Studies, *Native Title Newsletter*, No 2/2010 (2010), p 9. At [http://www.aiatsis.gov.au/ntru/newsletter.htmlMarApr10\[1\].pdf](http://www.aiatsis.gov.au/ntru/newsletter.htmlMarApr10[1].pdf) (viewed 15 July 2010).

Date	Event/summary of issue
<p><b>22 March 2010</b> <i>Appeal to the Trevorrow case on Stolen Generations was dismissed</i></p>	<p>The full court of the South Australia Supreme Court dismissed an appeal by the South Australian Government against an award of \$775 000 in compensation to a member of the Stolen Generations, Mr Bruce Trevorrow.</p> <p>The Court upheld the ruling that the government was negligent in its treatment of Mr Trevorrow, who was taken away from his parents as a child 50 years ago.<sup>59</sup></p>
<p><b>24 March 2010</b> <i>Indigenous Water Policy launched</i></p>	<p>Indigenous water experts from across Northern Australia convened at Parliament House in Darwin to deliver an Indigenous water policy statement.</p> <p>The policy statement was developed by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) through the Indigenous Water Policy Group (IWPG).</p> <p>The policy statement outlines the terms on which Indigenous people want to be engaged in the development of water policies. The policy position builds on the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> as well as other statements relating to water reform, such as the Garma International Indigenous Water Declaration and the Mary River Statement.<sup>60</sup></p>
<p><b>12 April 2010</b> <i>Indigenous Human Rights Network Australia (IHRNA) launched</i></p>	<p>A new online network for Indigenous human rights advocates called the Indigenous Human Rights Network Australia (IHRNA) was launched.</p> <p>IHRNA allows Aboriginal and Torres Strait Islander human rights advocates to increase their access to information, share best practices in promoting human rights, and strengthen their participation in human rights processes.</p> <p>IHRNA is hosted by the Australian Human Rights Commission, funded by Oxfam Australia and supported by the Diplomacy Training Program, University of New South Wales.<sup>61</sup></p>
<p><b>20 April 2010</b> <i>COAG agreed to establish a new National Health and Hospitals Network</i></p>	<p>The Council of Australian Governments (COAG), with the exception of Western Australia, reached an historic agreement on the establishment of a National Health and Hospitals Network.</p> <p>The reforms shift the emphasis in the health system from hospital-based care to the prevention and early detection of illness in primary health care settings. This shift has the potential to benefit Aboriginal and Torres Strait Islander people, who currently present at hospitals with late-stage illness at significantly higher rates than other Australians.</p>

59 Aboriginal Legal Rights Movement, 'Stolen Generation Payout Appeal', *Your Legal Rights: ALRM Quarterly Newsletter*, Edition 21 (2010). At <http://www.alm.org.au/newsletter.php> (viewed 14 April 2010).

60 NAILSMA, 'Indigenous Water Policy Launch' (Media Release, 22 March 2010). At [http://www.nailsma.org.au/news/indigenous\\_water\\_policy\\_launch.html](http://www.nailsma.org.au/news/indigenous_water_policy_launch.html) (viewed 19 July 2010).

61 Australian Human Rights Commission, 'New online network launched to protect Indigenous human rights' (Media Release, 12 April 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/31\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/31_10.html) (viewed 16 April 2010).

Date	Event/summary of issue
<p><b>20 April 2010</b> (continued) <i>COAG agreed to establish a new National Health and Hospitals Network</i></p>	<p>Under these reforms, the Australian Government will become the dominant funder of public hospitals and fund 60% of building, equipment, teaching, training and services.<sup>62</sup> Hospitals and health services will be organised and managed on a regional basis and Local Hospital Networks will be established to that end.</p> <p>The Australian Government also assumed 100% funding responsibility for primary health care and aged care. Medical Locals (largely based on the divisions of general practice) will be established in each region to coordinate the delivery of primary health care. It is anticipated that Aboriginal Medical Services, including community controlled services, will be the Medicare Local in regions where there are a high proportion of Indigenous residents, or in areas otherwise not serviced by general practitioners.</p> <p>From 1 July 2010, the Australian Government will deliver \$5.3 billion in additional funding over the next four years. A third of state and territory GST revenue (except WA) will be retained by the Commonwealth and allocated to health and hospitals reform.<sup>63</sup></p>
<p><b>21 April 2010</b> <i>Australian Government launched a Human Rights Framework</i></p>	<p>The Human Rights Framework is the Australian Government's response to the findings and recommendations of the National Human Rights Consultation.</p> <p>The Framework sets out five key principles and focuses, which are:</p> <ul style="list-style-type: none"> <li>▪ reaffirming a commitment to Australia's human rights obligations</li> <li>▪ the importance of human rights education</li> <li>▪ enhancing Australia's domestic and international engagement on human rights issues</li> <li>▪ improving human rights protections, including greater parliamentary scrutiny</li> <li>▪ achieving greater respect for human rights principles within the community.</li> </ul> <p>The Government committed to actions for the practical implementation of the Framework, which included:</p> <ul style="list-style-type: none"> <li>▪ investing over \$12 million in a comprehensive suite of education initiatives</li> <li>▪ establishing a new Parliamentary Joint Committee on Human Rights</li> <li>▪ requiring that each new Bill introduced into Parliament is accompanied by a statement of compatibility with Australia's international human rights obligations</li> <li>▪ combining federal anti-discrimination laws into a single Act</li> <li>▪ creating an annual NGO Human Rights Forum.<sup>64</sup></li> </ul>

62 The Hon K Rudd MP, Prime Minister, 'Historic health reform' (Media Release, 20 April 2010). At <http://www.pm.gov.au/node/6686> (viewed 2 June 2010).

63 The Hon K Rudd MP, Prime Minister, 'Historic health reform' (Media Release, 20 April 2010). At <http://www.pm.gov.au/node/6686> (viewed 2 June 2010).

64 The Hon R McClelland MP, Attorney-General, 'Australia's Human Rights Framework' (Media Release, 21 April 2010). At [http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2010\\_SecondQuarter\\_21April2010-AustraliasHumanRightsFramework](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_21April2010-AustraliasHumanRightsFramework) (viewed 21 May 2010).



Date	Event/summary of issue
<p><b>22 April 2010</b>  <i>South Australian Government interested in negotiated settlement for Stolen Generations compensation claims</i></p>	<p>The South Australian Attorney-General raised the possibility of a negotiated settlement for compensation claims by Stolen Generations members.</p> <p>He rejected the idea of a compensation tribunal to deal with the 100 potential compensation claim cases.<sup>65</sup></p>
<p><b>30 April 2010</b>  <i>First Australian Indigenous woman elected to the United Nations Permanent Forum on Indigenous Issues</i></p>	<p>Ms Megan Davis is the first Australian Indigenous woman elected to the United Nations Permanent Forum on Indigenous Issues.</p> <p>Ms Davis was nominated to the position by the Australian Government but she serves on the Forum as an independent expert. It was the first time the Australian Government had nominated an Indigenous woman to a UN body.<sup>66</sup></p>
<p><b>2 May 2010</b>  <i>National Congress of Australia's First Peoples established</i></p>	<p>The National Congress of Australia's First Peoples was officially launched in Sydney.</p> <p>The organisation has been incorporated. Kerry Arabena and Sam Jeffries were appointed as the inaugural Co-Chairs of the organisation. The Directors of the company and members of the National Executive has also been appointed.<sup>67</sup></p>
<p><b>7 May 2010</b>  <i>Healing Foundation announced its inaugural funding round</i></p>	<p>The Aboriginal and Torres Strait Islander Healing Foundation announced its inaugural funding round of \$2 million for local community-led healing projects.</p> <p>Grants will be available for local projects such as:</p> <ul style="list-style-type: none"> <li>▪ cultural renewal through connecting with culture, language and country</li> <li>▪ the development of healing centres and community healing plans</li> <li>▪ using song, dance, drama and art as part of the healing process</li> <li>▪ group and individual counselling, as well as traditional healing methods</li> <li>▪ drug and alcohol recovery projects</li> <li>▪ anger management and family violence projects.<sup>68</sup></li> </ul>

65 D Nason, 'State to negotiate on Stolen Generations', *The Australian*, 22 April 2010, p 4. At <http://www.theaustralian.com.au/politics/state-politics/state-to-negotiate-on-stolen-generations/story-e6frgczx-1225856607813> (viewed 12 July 2010).

66 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'First Australian Indigenous woman elected to the United Nations Permanent Forum on Indigenous Issues' (Media Release, 30 April 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/first\\_australian\\_indigenous\\_woman\\_elected\\_30apr10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/first_australian_indigenous_woman_elected_30apr10.aspx) (viewed 10 May 2010).

67 National Congress of Australia's First Peoples, 'New Congress to Represent Aboriginal and Torres Strait Islanders' (Media Release, 2 May 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/40\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/40_10.html) (viewed 4 May 2010).

68 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Healing Foundation makes milestone move towards healing' (Media Release, 7 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/healing\\_foundation\\_7may10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/healing_foundation_7may10.aspx) (viewed 10 May 2010).

Date	Event/summary of issue
<p><b>11 May 2010</b> <i>Indigenous-specific spending announced in 2010–2011 federal budget</i></p>	<p>The Indigenous-specific budget allocations announced in the 2010–2011 federal budget included:</p> <ul style="list-style-type: none"> <li>▪ community safety (\$104.3 million)</li> <li>▪ employment (\$49.9 million)</li> <li>▪ education and early childhood (\$74.8 million)</li> <li>▪ housing (\$62.9 million)</li> <li>▪ flexible remote service delivery (\$46 million)</li> <li>▪ Indigenous broadcasting (\$15.2 million)</li> <li>▪ Indigenous legal assistance services (\$34.9 million).<sup>69</sup></li> </ul>
<p><b>12 May 2010</b> <i>Construction of Alice Springs' accommodation park begins</i></p>	<p>Construction on an \$11 million accommodation park in Alice Springs began. The accommodation park is expected to provide safe, short-term accommodation for up to 150 Indigenous people, particularly families with children and older people who visit the town. Aboriginal Hostels Limited will manage the park for the first two years of operation.<sup>70</sup></p>
<p><b>13 May 2010</b> <i>Gregory National Park returned to Traditional Owners</i></p>	<p>The Australian Government returned Gregory National Park and Gregory's Tree Historical Reserve in the Northern Territory to the Traditional Owners.</p> <p>This was in accordance with the 2004 landmark agreement in which Traditional Owners, and the Northern Territory and Australian governments agreed that the land will be scheduled as Aboriginal freehold land under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth) and will be leased back to the Northern Territory for 99 years for use as a national park.<sup>71</sup></p>
<p><b>13 May 2010</b> <i>Senate Inquiry declared there is a crisis in Indigenous hearing health</i></p>	<p>The Senate Community Affairs Committee released its inquiry report, <i>Hear us: Inquiry into Hearing Health in Australia</i>.</p> <p>The report declared there is a crisis in Indigenous ear and hearing health in Australia. Indigenous Australians are far more likely to experience hearing impairment than non-Indigenous Australians. The report discussed the real and potential effects of hearing impairment as additional and particular barriers for access to education, employment and the justice system for Indigenous people.</p> <p>The report contained specific recommendations to improve the hearing health of Indigenous Australians.<sup>72</sup></p>

69 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Closing the Gap – Strengthening Indigenous Communities' (Media Release, 11 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing\\_the\\_gap\\_11may10.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_the_gap_11may10.htm) (viewed 12 May 2010).

70 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Work begins on the Alice Springs accommodation park' (Media Release, 12 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm\\_m\\_alicsspringsaccom\\_12may2010.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_alicsspringsaccom_12may2010.aspx) (viewed 20 May 2010).

71 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Gregory National Park returned to Traditional Owners' (Media Release, 13 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/gregory\\_national\\_park\\_13may10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/gregory_national_park_13may10.aspx) (viewed 20 May 2010).

72 Senate Community Affairs Committee, Parliament of Australia, *Hear us: Inquiry into Hearing Health in Australia* (2010). At [http://www.aph.gov.au/Senate/committee/clac\\_ctte/hearing\\_health/report/index.htm](http://www.aph.gov.au/Senate/committee/clac_ctte/hearing_health/report/index.htm) (viewed 25 May 2010).

Date	Event/summary of issue
<p><b>14 May 2010</b> <i>Research showed no beneficial link between income management and consumption patterns</i></p>	<p>The Menzies School of Health Research found that the income management scheme introduced under the Northern Territory Emergency Response (NTER) has had no beneficial effect on the sales of tobacco, cigarettes, soft drink, fruit or vegetable sales. The findings challenge assertions that income management leads to healthy eating and lifestyles.<sup>73</sup></p>
<p><b>20 May 2010</b> <i>National Aboriginal and Torres Strait Islander Women's Health Strategy developed</i></p>	<p>The Australian Women's Health Network (AWHN) and Aboriginal Women's Talking Circle developed a National Aboriginal and Torres Strait Islander Women's Health Strategy that seeks to address the gap between Indigenous and non-Indigenous women's health.<sup>74</sup></p>
<p><b>24 May 2010</b> <i>Plan to boost Indigenous businesses announced</i></p>	<p>The Australian Government announced a new strategy and action plan to support Indigenous businesses. The support will be in the form of:</p> <ul style="list-style-type: none"> <li>▪ financial support for state and regional Indigenous chambers of commerce</li> <li>▪ a new business advisory group to provide direct, expert advice on business support and policies that will support growth in the sector.<sup>75</sup></li> </ul>
<p><b>25 May 2010</b> <i>Rental payments for leases under the Northern Territory Emergency Response commenced</i></p>	<p>The Australian Government started paying rent to Aboriginal land owners in 45 of the 64 communities subject to five-year leases made under the Northern Territory Emergency Response.</p> <p>The rent payments are backdated to the commencement of the leases in 2007.<sup>76</sup></p>
<p><b>26 May 2010</b> <i>Stolen Generations Working Partnership announced</i></p>	<p>The Australian Government announced the Stolen Generations Working Partnership.</p> <p>The Partnership outlines the Government's approach to addressing the immediate and practical needs of the members of the Stolen Generations. Priorities identified in the paper include:</p> <ul style="list-style-type: none"> <li>▪ improving the service members of the Stolen Generations receive from mainstream and Indigenous services</li> </ul>

73 J K Brimblecombe, J McDonnell, A Barns, J Garnggukpuy Dhurrkay, D P Thomas, and R S Baillie, 'Impact of income management on store sales in the Northern Territory' (2010) 192 (10) *Medical Journal of Australia* 549. At [http://www.mja.com.au/public/issues/192\\_10\\_170510/bri10090\\_fm.html](http://www.mja.com.au/public/issues/192_10_170510/bri10090_fm.html) (viewed 12 July 2010).

74 Department of Health and Ageing, 'Indigenous Women's Health Strategy welcomed' (Joint Media Release, 20 May 2010). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr10-ws-ws048.htm?OpenDocument> (viewed 27 May 2010).

75 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Government boosts support for Indigenous businesses' (Media Release, 24 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indigenous\\_businesses\\_24may10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indigenous_businesses_24may10.aspx) (viewed 12 July 2010).

76 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Rent payments for NTER 5-year leases' (Media Release, 25 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/rent\\_nter\\_25may10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/rent_nter_25may10.aspx) (viewed 27 May 2010).

Date	Event/summary of issue
<p><b>26 May 2010</b> (continued) <i>Stolen Generations Working Partnership announced</i></p>	<ul style="list-style-type: none"> <li>▪ ensuring appropriate diagnosis and pathways to care for members of the Stolen Generations experiencing social and emotional wellbeing issues</li> <li>▪ recording oral histories and other ways to honour members of the Stolen Generations' resilience and educate the broader community</li> <li>▪ creating places of belonging and acceptance and maintaining connection with other members of the Stolen Generations</li> <li>▪ as part of the National Indigenous Law and Justice Framework supporting members of the Stolen Generations and their children who are in prison, both pre and post-release.<sup>77</sup></li> </ul>
<p><b>28 May 2010</b> <i>\$1.4 million funding for native title anthropologists announced</i></p>	<p>The Attorney-General announced that \$1.4 million will be invested to attract more anthropologists to work on native title.<sup>78</sup></p>
<p><b>28 May 2010</b> <i>\$1.8 million for Indigenous hearing health in NT announced</i></p>	<p>The Australian Deputy Prime Minister, the Minister for Indigenous Health and the Northern Territory Minister for Central Australia jointly announced \$1.8 million in funding for improving the hearing health of Indigenous people in the Northern Territory. The funds are for:</p> <ul style="list-style-type: none"> <li>▪ follow-up hearing checks and treatment of ear disease for more than 600 children</li> <li>▪ testing that will help address middle ear infection</li> <li>▪ visits by audiologists to more than 22 communities that have been equipped with hearing booths</li> <li>▪ five additional hearing case managers in regional teams in Central Australia, Barkly, Top End Central, Top End West and East Arnhem</li> <li>▪ four additional local community hearing workers to service Gunbalanya, Angurugu, Umbakumba, Gapuwiyak, Maningrida and Millingimbi.<sup>79</sup></li> </ul>
<p><b>4 June 2010</b> <i>Wild rivers declaration made</i></p>	<p>The Queensland Government made the Wenlock Basin Wild River Declaration. This creates a framework for the regulation of the use and development of the land and waters within the declared area.<sup>80</sup></p>

77 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stolen Generations Working Partnership' (Media Release, 26 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/stolen\\_generations\\_26may10.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/stolen_generations_26may10.htm) (viewed 26 May 2010).

78 Attorney-General's Department, '\$1.4 Million for native title anthropologists' (Media Release, 28 May 2010). At [http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2010\\_SecondQuarter\\_28May2010-\\$1.4MillionforNativeTitleAnthropologists](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_28May2010-$1.4MillionforNativeTitleAnthropologists) (viewed 15 July 2010).

79 Department of Health and Ageing, 'Boost to Northern Territory Hearing health Services' (Joint Media Release, 28 May 2010). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr10-ws-ws051.htm?OpenDocument> (viewed 2 June 2010).

80 Department of Environment and Resource Management (Queensland Government), *Declared Wild Rivers Areas*, [http://www.derm.qld.gov.au/wildrivers/declared\\_areas.html](http://www.derm.qld.gov.au/wildrivers/declared_areas.html) (viewed 23 December 2010).

Date	Event/summary of issue
<p><b>7 June 2010</b> <i>Report of the UN Special Rapporteur on health's visit to Australia released</i></p>	<p>The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health released his report on his 2009 mission to Australia.</p> <p>The Report noted that Indigenous Australians continue to experience significantly poorer health outcomes compared to other Australians, as well as disparities in the social determinants of health such as housing, education, income, and economic, political and social participation.</p> <p>The Rapporteur commended the Australian Government's efforts at closing the gap in the area of health, but noted that there are still government policies and practices that violate the human rights of Indigenous peoples. He singled out the Northern Territory Emergency Response as one such policy. He recommendations included that:</p> <ul style="list-style-type: none"> <li>▪ the RDA be fully restored</li> <li>▪ Indigenous Australians be given full constitutional protection and acknowledgement</li> <li>▪ the right to health be incorporated into a national health policy</li> <li>▪ legislative guarantees for the full involvement of Indigenous representative bodies in decisions affecting Indigenous peoples</li> <li>▪ adequate resources for improving the health of Indigenous peoples in all parts of Australia.<sup>81</sup></li> </ul>
<p><b>8 June 2010</b> <i>Legal action on Wild Rivers commenced</i></p>	<p>The Cape York Land Council filed a writ with the High Court of Australia challenging the validity of three wild river declarations on Cape York under the <i>Racial Discrimination Act 1975</i> (Cth) and the <i>Native Title Act 1993</i> (Cth).</p>
<p><b>9 June 2010</b> <i>\$42 million for Indigenous culture and heritage projects</i></p>	<p>Funding will be distributed to 380 Indigenous culture and heritage projects through five programs, which include the:</p> <ul style="list-style-type: none"> <li>▪ National Arts and Crafts Industry Support (NACIS) Program which provides funding for Indigenous art centres and art support organisations</li> <li>▪ Indigenous Culture Support (ICS) Program which helps to maintain Indigenous culture through community involvement, transmission of knowledge and skills across generations and support of new forms of cultural expression.</li> <li>▪ Maintenance of Indigenous Languages and Records (MILR) Program</li> <li>▪ Indigenous Broadcasting Program (IBP)</li> <li>▪ Indigenous Heritage Program (IHP) which supports the identification, conservation and promotion of Indigenous heritage places important to Aboriginal and Torres Strait Islander people.<sup>82</sup></li> </ul>

81 Human Rights Law Resource Centre, *Right to Health: UN Special Rapporteur Releases Report on Australia – Focus on Indigenous Health and Detainee Health*, <http://www.hrlrc.org.au/content/topics/esc-rights/right-to-health-un-special-rapporteur-releases-report-on-australia/> (viewed 19 July 2010).

82 The Hon P Garrett MP, Minister for Environment Protection, Heritage and the Arts, '\$42 million supports Australia's Indigenous Art, culture and heritage' (Media Release, 9 June 2010). At <http://www.environment.gov.au/minister/garrett/2010/mr20100609c.html> (viewed 9 June 2010).

Date	Event/summary of issue
<p><b>15 June 2010</b> <i>National Parks and Wildlife Amendment Act 2010 (NSW) receives assent</i></p>	<p>The Act makes significant changes to the Aboriginal heritage provisions of the <i>National Parks and Wildlife Act 1974</i> (NSW), including:</p> <ul style="list-style-type: none"> <li>▪ new offences and increased penalties for harm to Aboriginal places and objects</li> <li>▪ introduction of wide range of defences</li> <li>▪ new processes concerning Aboriginal Heritage Impact Permits.<sup>83</sup></li> </ul>
<p><b>21 June 2010</b> <i>Legislation reforming the Northern Territory Emergency Response passed by Parliament.</i></p>	<p>The Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill 2009 was passed by Parliament.</p> <p>The new legislation retains the income management scheme of the previous legislation but seeks to avoid the conflict with RDA by introducing new criteria that are independent of race or ethnicity of potential subjects of the scheme.</p> <p>The new legislation has also retained aspects of the previous NTER legislation such as alcohol and pornography restrictions; the ability to compulsorily acquire five-year leases; community store licensing and law enforcement powers. However, the Government has sought to redesign these measures in order to make them qualify as special measures authorised under the RDA.<sup>84</sup></p> <p>The amendments do not completely reinstate the RDA and the legislation is only a first step in the restoration of full protections for the affected communities.<sup>85</sup></p>
<p><b>22 June 2010</b> <i>Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Cth) passed by the Senate</i></p>	<p>The Senate Legal and Constitutional Affairs Legislation Committee reported on its Inquiry into the Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Cth). The Committee recommended that the Senate not pass the Bill.</p> <p>The Senate passed the Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Cth) on the same day.</p>
<p><b>28 June 2010</b> <i>Close the Gap – Making It Happen national workshop held</i></p>	<p>The ‘Close the Gap – Making It Happen’ national workshop brought together key Indigenous and non-Indigenous health peak bodies and experts from across Australia’s non-government and government sectors.</p> <p>The workshop focused on ways to bring to fruition the Australian Government’s commitments to Close the Gap, particularly the development of a long-term national action plan developed in partnership with Aboriginal and Torres Strait Islander peoples.<sup>86</sup></p>

83 New South Wales Aboriginal Land Council, *Changes to Aboriginal Heritage Protection under the National Parks and Wildlife Act 1974 (NSW)* (6 July 2010). At [http://www.alc.org.au/media/46338/100701%20fact%20sheet%20omnibus%20bill%20passed%20draft%20regs%20final%20v2%20incl%20date%20in%20footer%20\(3\).pdf](http://www.alc.org.au/media/46338/100701%20fact%20sheet%20omnibus%20bill%20passed%20draft%20regs%20final%20v2%20incl%20date%20in%20footer%20(3).pdf) (viewed 30 July 2010).

84 Australian Human Rights Commission, ‘Close the Gap – Making it Happen’ (Media Release, 28 June 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/64\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/64_10.html) (viewed 19 July 2010).

85 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, ‘Racial Discrimination Act to be restored in the Northern Territory’ (Media Release, 22 June 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm\\_m\\_rda\\_22june2010.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_rda_22june2010.aspx) (viewed 23 June 2010).

86 Australian Human Rights Commission, ‘Passage of NTER Amendments a step in the right direction’ (Media Release, 22 June 2010). At [http://www.humanrights.gov.au/about/media/media\\_releases/2010/61\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/61_10.html) (viewed 12 July 2010).

# Appendix 4:

## Elements of a common understanding of free, prior and informed consent<sup>1</sup>

.....

### 1. What

- **Free** should imply no coercion, intimidation or manipulation.
- **Prior** should imply that consent has been sought sufficiently in advance of any authorization or commencement of activities and that respect is shown for time requirements of indigenous consultation/consensus processes.
- **Informed** should imply that information is provided that covers (at least) the following aspects:
  - the nature, size, pace, reversibility and scope of any proposed project or activity
  - the reason(s) for or purpose(s) of the project and / or activity
  - the duration of the above
  - the locality of areas that will be affected
  - a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle
  - personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
  - procedures that the project may entail.
- **Consent**

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest-holders. Indigenous peoples should be able

---

1 Extract from United Nations Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (New York, 17–19 January 2005)*, UN Doc E/C.19/2005/3 (2005), paras 46–49. At <http://www.un.org/esa/socdev/unpfii/en/workshopFPIC.html> (viewed 19 November 2010).

to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth, as appropriate. This process may include the option of withholding consent.

Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.

## 2. When

- FPIC should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples' own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.

## 3. Who

- Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. In free, prior and informed consent processes, indigenous peoples, United Nations organizations and Governments should ensure a gender balance and take into account the views of children and youth, as relevant.

## 4. How

- Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.

## 5. Procedures/mechanisms

- Mechanisms and procedures should be established to verify free, prior and informed consent as described above, inter alia, mechanisms of oversight and redress, including the creation of national ones.
- As a core principle of free, prior and informed consent, all sides in a FPIC process must have equal opportunity to debate any proposed agreement/development/project. 'Equal opportunity' should be understood to mean equal access to financial, human and material resources in order for communities to fully and meaningfully debate in indigenous language(s), as appropriate, or through any other agreed means on any agreement or project that will have or may have an impact, whether positive or negative, on their development as distinct peoples or an impact on their rights to their territories and/or natural resources.
- Free, prior and informed consent could be strengthened by establishing procedures to challenge and to independently review these processes.
- Determination that the elements of free, prior and informed consent have not been respected may lead to the revocation of consent given.

It is recommended that all actors concerned, including private enterprise, pay due attention to these elements.



# Appendix 5:

## Overview of the National Partnership Agreement on Remote Service Delivery

.....

### 1. Overview

The Council of Australian Governments (COAG) National Partnership Agreement for Remote Service Delivery came into effect in January 2009 and will run to 30 June 2014. It is a joint commitment by all Australian governments to a ‘concentrated and accelerated approach to tackle deep-seated disadvantage’ in remote communities.<sup>1</sup> The Partnership is premised on a place-based initiative, targeting 29 remote priority locations across Australia for a whole-of-government approach to service delivery.<sup>2</sup>

The Remote Service Delivery Partnership is geared at developing ‘new ways’ of working with each priority community, with a focus on ‘getting things right’. It is to be underpinned by creating strong partnerships with local Indigenous communities and strict accountabilities for all players.<sup>3</sup> A government office, which acts as the single government interface, has been

---

1 The Hon J Gillard MP, Deputy Prime Minister, Minister for Education, Minister for Workplace Relations, The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, The Hon N Roxon MP, Minister for Health and Ageing, The Hon R McClelland MP, Attorney General, Senator The Hon M Arbib, Minister for Employment Participation, The Hon P Garrett MP Minister for Environment Protection, Heritage and the Arts, The Hon W Snowden MP, Minister for Indigenous Health, Rural and Regional Health & Regional Services Delivery, ‘Closing the Gap – Strengthening Indigenous Communities’ (Joint Media Release, 11 May 2010). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing\\_the\\_gap\\_11may10.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_the_gap_11may10.htm) (viewed 12 May 2010).

2 The 29 locations were determined using the principles outlined in the Schedules A and B of the Remote Service Delivery National Partnership Agreement. This criteria based selection included:

- significant concentration of population;
- anticipated demographic trends and pressures;
- the potential for economic development and employment;
- the extent of pre-existing shortfalls in government investment in infrastructure and services; and
- where possible, investment will also build on other significant investment already in progress.

Applying this criteria the following locations were identified as priority locations for the initial wave of investment:

- NT: Angurugu, Galiwin’ku, Gapuwiyak, Gunbalanya, Hermannsburg, Lajamanu, Maningrida, Milingimbi, Nguiu, Ngukurr, Numbulwar, Umbakumba, Wadeye, Yirrkala and Yuendumu
- Qld: Mornington Island, Doomadgee, Hope Vale, Aurukun, Mossman Gorge and Coen
- NSW: Walgett and Wilcannia
- SA: Amata and Mimili
- WA: Fitzroy Crossing, Halls Creek, Ardyaloon and Beagle Bay

3 Office of the Coordinator General of Remote Service Delivery, *Frequently Asked Questions*, <http://cgris.gov.au/site/faq.asp> (viewed 10 May 2010).

established in each priority community to achieve these aims. Local Implementation Plans for each priority location will be developed working with the communities. These Plans are supplemented by audits to identify gaps in infrastructure and service delivery.<sup>4</sup>

Intended benefits from the Remote Service Delivery Partnership include:

- improved outcomes through improved access to health, education, employment and other services in remote areas
- revitalised Indigenous organisations with capacity to assist individuals and families to engage with all the opportunities associated with a better serviced region
- greater economic opportunities (business investment and home ownership) as a result of resolution of land tenure and land administration issues
- over time, a reduced reliance on government transfer payments by individuals in remote communities.<sup>5</sup>

In total, \$291.2 million is invested in the Remote Service Delivery Partnership. The Australian Government is providing \$187.7 million and the remaining \$103.4 million is from the states and territories.<sup>6</sup>

## 2. Single government interface

The Remote Service Delivery Partnership is structured as a place-based approach to service delivery. This means investment is focused on a location rather than specific programs. Current evidence indicates that place-based initiatives can effectively facilitate holistic approaches for addressing community disadvantage.<sup>7</sup> Nevertheless, the COAG trials indicate that the success of place-based initiatives is contingent on other factors including:

- clearly identifiable Indigenous representative leadership
- governments playing an enabling or facilitating role across all levels of government and community.<sup>8</sup>

The single government office in each priority location coordinates local implementation planning processes (discussed below).

---

4 Office of the Coordinator General for Remote Indigenous Services, *What is Remote Service Delivery*, <http://cgris.gov.au/site/rsd.asp> (viewed 28 April 2010).

5 Council of Australian Governments, *Communiqué - 29 November 2009* (2009). 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 28 April 2010).

6 Council of Australian Governments, *National Partnership Agreement on Remote Service Delivery* (2009). At [http://www.coag.gov.au/intergov\\_agreements/federal\\_financial\\_relations/docs/national\\_partnership/national\\_partnership\\_on\\_remote\\_service\\_delivery\\_with\\_amended\\_schedule.pdf](http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/national_partnership_on_remote_service_delivery_with_amended_schedule.pdf) (viewed 28 April 2010).

7 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 11. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review.pdf](http://www.nterreview.gov.au/docs/report_nter_review.pdf) (viewed 28 April 2010); Morgan, Disney and Associates Pty Ltd with Tracey Whetnall Consulting and Wis-Wei Consulting Pty Ltd, *Synopsis Review of the COAG Trial Evaluations*, Report to OPIC, Canberra (2006). At [http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag\\_trial\\_site\\_reports/overview/Documents/COAG\\_Trials\\_Overview.pdf](http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/overview/Documents/COAG_Trials_Overview.pdf) (viewed at 4 June 2010).

8 Morgan, Disney and Associates Pty Ltd with Tracey Whetnall Consulting and Wis-Wei Consulting Pty Ltd, *Synopsis Review of the COAG Trial Evaluations* (2006) p 5. At [http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag\\_trial\\_site\\_reports/overview/Documents/COAG\\_Trials\\_Overview.pdf](http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/overview/Documents/COAG_Trials_Overview.pdf) (viewed at 4 June 2010).

Six strategically located Regional Operation Centres provide support for the priority locations.<sup>9</sup> The Regional Operations Centres works with government agencies across all levels of government and form part of the whole-of-government interface.<sup>10</sup> Fitzroy Crossing, Adyaloon, Beagle Bay and Halls Creek are supported by the Broome Regional Operations Centre.

This single government office is the conduit for creating strong partnerships between government and priority communities. Two types of government employee will work out of these offices’:

- Local Area Coordinator (also known as Government Business Manger)
- Indigenous Engagement Officer.

These staff will live and work in the community.

The Local Area Coordinators are appointed to function as the direct link between community and government. They:

- are the key liaison and consultation point in communities
- work collaboratively with other government representatives
- assist with community planning and agreement making
- ensure that services are coordinated on the ground
- report on progress and on local issues and concerns to the local Regional Operations Centre and State/Territory Board of Management.<sup>11</sup>

The Indigenous Engagement Officers are Indigenous people recruited from within the local area, who speak the local language/s. They work with the Local Area Coordinators in their liaison and engagement work and help to support their communities as the strategy is rolled out.<sup>12</sup>

### 3. Community audits

Comprehensive community audits have been undertaken to effectively implement the Remote Service Delivery Partnership, and to subsequently measure its impact. This includes:

- an audit of municipal and essential services and infrastructure (part of the wider National Partnership Agreement on Remote Indigenous Housing)
- ‘baseline mapping’ of social and economic conditions, existing government investments, services and gaps in services.<sup>13</sup>

---

9 These six Regional Operations Centres are: Darwin, NT, Cairns, Mount Isa, Qld, Broome, WA, Adelaide, SA, Dubbo, NSW.

10 Department of Families, Housing, Community Services and Indigenous Affairs, *The Remote Service Delivery single government interface*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD\\_NPA/Pages/single\\_gov.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD_NPA/Pages/single_gov.aspx) (viewed 10 May 2010).

11 Department of Families, Housing, Community Services and Indigenous Affairs, *The Remote Service Delivery single government interface*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD\\_NPA/Pages/single\\_gov.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD_NPA/Pages/single_gov.aspx) (viewed 10 May 2010).

12 Department of Families, Housing, Community Services and Indigenous Affairs, *The Remote Service Delivery single government interface*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD\\_NPA/Pages/single\\_gov.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD_NPA/Pages/single_gov.aspx) (viewed 10 May 2010).

13 Department of Families, Housing, Community Services and Indigenous Affairs, *Progress on Remote Service Delivery*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD\\_NPA/Pages/progress\\_rsd.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD_NPA/Pages/progress_rsd.aspx) (viewed 10 May 2010).

The 'baseline mapping' information will be drawn from available statistical data from the Australian Bureau of Statistics and from state and territory government agencies. This will provide information on the following indicia:

- who lives in the area – the number of people and their ages
- how many people might live in the area in five years time
- existing facilities, such as schools, clinics, playgrounds, meetings halls etc
- available services in areas such as health, early childhood, schooling and aged care
- community health
- the number and condition of houses
- the local economy including jobs.<sup>14</sup>

These audits are a welcome component of the Strategy. They are to provide a sound basis for strategising about service delivery, developing local priorities and assist in monitoring the impacts of the Partnership. Mapping and benchmarking policy outcomes is consistent with human rights standards.<sup>15</sup> Informed decisions rely on the collection of reliable data on the real effectiveness of development programs.<sup>16</sup>

## 4. Local Implementation Plans

Local Implementation Plans are a central component of the Remote Service Delivery Partnership. These Plans perform two key roles that will underpin the success of the Partnership:

- They are the prime mechanism for engagement with local communities.
- They will outline the key performance indicators and benchmarks to measure the performance of the National Partnership Agreement and to hold various parties accountable.

The Local Area Coordinator is to work *with* the local community, informed by the auditing and baseline mapping, to detail priorities, actions, responsibilities and commitments from the various partners to the agreement.<sup>17</sup> The Regional Operations Centre provides extra assistance to the Local Area Coordinator and the members of the community. These Plans are to establish:

- community driven priorities and needs
- the commitments and responsibilities of various governments and their agencies to the when, why and how of implementing meeting these needs through the provision of services.

Upon completion these Local Implementation Plans will become public documents.

---

14 Department of Families, Housing, Community Services and Indigenous Affairs, *Progress on Remote Service Delivery*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD\\_NPA/Pages/progres\\_rsd.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD_NPA/Pages/progres_rsd.aspx) (viewed 10 May 2010).

15 See W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (2003), ch 4. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport02/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport02/index.html) (viewed 22 June 2010).

16 See Permanent Forum on Indigenous Issues, *Report of the Workshop on Data Collection and Disaggregation for Indigenous Peoples*, UN Doc E/C.19/2004/2 (2004), para 11.

17 Department of Families, Housing, Community Services and Indigenous Affairs, *Progress on Remote Service Delivery*, [http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD\\_NPA/Pages/progres\\_rsd.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/families/RSD_NPA/Pages/progres_rsd.aspx) (viewed 10 May 2010).

The Coordinator General suggests that a Local Implementation Plan will be effective because it ‘forces governments to make their commitments and timelines public and imposes a discipline on implementation that may not have been there previously’.<sup>18</sup>

## 5. The Office of the Coordinator General for Remote Indigenous Services

The Office of the Coordinator General has been established to monitor the effectiveness of the Remote Service Delivery Partnership and the performance of Australian Government agencies in meeting their commitments under it. The office was created by the Australian Government pursuant to the *Coordinator-General for Remote Indigenous Services Act 2009* (Cth).

Each state and territory also has a senior officer to perform functions similar to the Coordinator General at the state/territory level and these office holders work with the Coordinator General to further the aims of the Strategy.<sup>19</sup>

The Coordinator General’s tasks include:

- oversee the implementation of the Remote Service Delivery Partnership in Indigenous communities
- formally report to the Minister for Families, Housing, Community Services and Indigenous Affairs twice a year on progress, and ensure that all government service agencies are held accountable for their implementation responsibilities under the Remote Service Delivery Partnership
- have the authority to work across agencies to cut through bureaucratic blockages and red tape, and to make sure services are delivered effectively
- have a direct line of sight to the whole of government Regional Operations Centres established to coordinate services in communities and the single government contact points located within the identified priority communities.<sup>20</sup>

The Coordinator General’s primary function is to monitor and oversee the roll-out of the Remote Service Delivery Partnership.

## 6. State/territory implementation plans

The roles and responsibility for each state and territory government is guided by a Bilateral Implementation Plan between that jurisdiction and the Australian Government. Although these Plans vary across each jurisdiction they provide a similar framework outlining the ways governments will work together and with priority communities.<sup>21</sup>

---

18 Office of the Coordinator General for Remote Indigenous Service Delivery, *Project Management and Local Implementation Planning The Coordinator General’s view*, [http://www.cgris.gov.au/site/newsarticle\\_1.asp](http://www.cgris.gov.au/site/newsarticle_1.asp) (viewed 10 May 2010).

19 Office of the Coordinator General for Remote Indigenous Service Delivery, *Frequently Asked Questions*, <http://cgris.gov.au/site/faq.asp> (viewed 7 September 2010).

20 Office of the Coordinator General for Remote Indigenous Services, *Role of the Coordinator General*, <http://cgris.gov.au/site/role.asp> (viewed 29 April 2010).

21 Office of the Coordinator General of Remote Service Delivery, *What is Remote Service Delivery*, <http://cgris.gov.au/site/rsd.asp> (viewed 10 May 2010).

These implementation plans are designed to delineate the responsibilities and timelines of the Commonwealth and the relevant state/territory jurisdiction and facilitate a clear whole-of-government coordinated approach to service delivery.

### 7. Boards of Management

A Remote Service Delivery Board of Management, comprising of senior officers from both the Australian Government and the relevant state/territory, has been created in each state/territory to oversee the roll-out of the Remote Service Delivery Partnership.<sup>22</sup>

The Board of Management meets every four weeks to support the single government interface (both the Regional Operations Centres and locally-based staff). These meetings include monitoring implementation progress and, where necessary, expediting service delivery issues.<sup>23</sup>

---

22 Office of the Coordinator General for Remote Indigenous Services, *Frequently Asked Questions*, <http://cgris.gov.au/site/faq.asp> (viewed 7 September 2010).

23 Office of the Coordinator General for Remote Indigenous Services, *Frequently Asked Questions*, <http://cgris.gov.au/site/faq.asp> (viewed 7 September 2010).

## **Further Information**

### **Australian Human Rights Commission**

Level 8, Piccadilly Tower  
133 Castlereagh Street  
SYDNEY NSW 2000

GPO Box 5218  
SYDNEY NSW 2001  
Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419  
General enquiries and publications: 1300 369 711  
TTY: 1800 620 241  
Fax: (02) 9284 9611  
Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

For detailed and up to date information about the Australian Human Rights Commission visit our website at: [www.humanrights.gov.au](http://www.humanrights.gov.au)

To order more publications from the Australian Human Rights Commission download a Publication Order Form at: [www.humanrights.gov.au/about/publications/index.html](http://www.humanrights.gov.au/about/publications/index.html) or call: (02) 9284 9600, fax: (02) 9284 9611 or e-mail: [publications@humanrights.gov.au](mailto:publications@humanrights.gov.au)

### **Printing information**

This publication is printed on environmentally responsible paper manufactured under the environmental management system ISO 14001 using Elemental Chlorine Free (ECF) pulp sourced from sustainable, well-managed forests. This stock is FSC Chain of Custody (CoC) certified (mixed sources).

Printed in Australia by Paragon Printers Australasia and manufactured under an ISO 14001-2004 Environmental Management System. Paragon Printers Australasia is also FSC and PEFC certified.

## Social Justice Report 2010

*Aboriginal and Torres Strait Islander  
Social Justice Commissioner*

.....

In his first *Social Justice Report*, Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda identifies the key priorities and themes that will guide his work during his five-year term.

The *Social Justice Report 2010* identifies how the *United Nations Declaration on the Rights of Indigenous Peoples* will provide a framework for pursuing the Social Justice Commissioner's key priorities and themes.

The Social Justice Commissioner's agenda will focus on developing stronger and deeper relationships between Aboriginal and Torres Strait Islander peoples and governments; between Aboriginal and Torres Strait Islander peoples and the broader Australian community; and within Aboriginal and Torres Strait Islander communities themselves.

The *Social Justice Report 2010* also explores the significance of constitutional reforms in achieving a reconciled Australia and profiles a case study of recent developments in the Fitzroy Valley to argue that community-led development projects ensure the best outcomes for addressing concerns in Aboriginal and Torres Strait Islander communities.

The Report makes 15 recommendations for addressing issues in these areas.



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*