

# Social Justice and Native Title Reports

2006

## A COMMUNITY GUIDE

### A NOTE FROM THE COMMISSIONER

IN MY ROLE AS SOCIAL JUSTICE COMMISSIONER I AM REQUIRED TO PRODUCE TWO ANNUAL REPORTS ON Indigenous human rights issues – the Social Justice Report and the Native Title Report.

The reports, which are tabled in federal Parliament, analyse the major changes and challenges in Indigenous affairs over the past year. They also include recommendations to government that promote and protect the rights of Indigenous Australians.

This easy-to-read Community Guide offers a snapshot of some of the key issues in both reports.

An important part of my role is to work with governments, Indigenous organisations and communities and many other groups on practical human rights projects.

Over the coming 12 months I will:

- continue to build partnerships and identify practical steps to 'close the gap' on Indigenous health inequality
- work with Indigenous communities and organisations to provide human rights education on issues such as customary law and family violence
- develop options for remote Indigenous education, now and into the future, in partnership with key groups
- complete a second stage of research into Indigenous young people with cognitive (brain function) disability and the links to the health, education and juvenile justice systems
- review the National Indigenous Legal Advocacy Courses
- support an Indigenous Peoples Organisations Network to coordinate input into United Nations activities and share human rights information with communities in Australia.

I will also follow up on the issues and recommendations in the Social Justice and Native Title Reports.

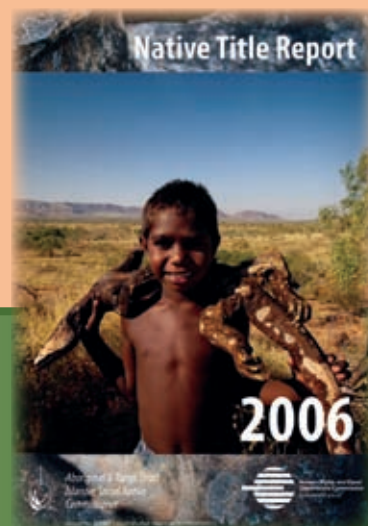


**TOM CALMA** is the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Tom, an Aboriginal elder from the Kungarakan tribal group and a member of the Iwaidja tribal group of the Northern Territory, commenced his five-year term in July 2004.

As Commissioner he advocates for the recognition of the rights of Indigenous Australians and seeks to promote respect and understanding of these rights among the broader Australian community.

Tom has been involved in Indigenous affairs at a local, community, state, national and international level and has worked in the public sector for over 30 years.



Aboriginal and Torres Strait Islander  
Social Justice Commissioner



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# Generating economic development

IN 2006 THE AUSTRALIAN GOVERNMENT amended the *Aboriginal Land Rights (Northern Territory) Act 1976* to make 99 year lease tenures possible over Indigenous townships on communal land. It is one of a number of reforms that the Government has undertaken which aim to stimulate private enterprise, economic development and Indigenous home ownership in remote areas.

There is no doubt that sustainable economic development is essential for the well-being of remote Indigenous communities. But I am concerned that these changes can remove Indigenous peoples from the management and governance of our affairs.

For instance, under the land tenure changes, the government will maintain a 99 year headlease over the township. The Government will then sublease individual land lots to individuals and businesses. Traditional owners can negotiate conditions on the headlease, but they will have no say over the details of the sublease.

These changes also have the potential to entrench poverty, rather than reduce it. International research shows that dividing indigenous land into small parcels leads to extensive administrative costs, limited economic benefits for indigenous peoples and the loss of ancestral lands. Both the United States and New Zealand are currently reversing individual land titling policies for these very reasons.

Indigenous communities will not be forced to agree to headleases. However, the Government is

encouraging sign up to agreements by negotiating annual rental payments with families who have traditional rights over the township. Additional housing and infrastructure is being offered to communities that sign headleases.

While I congratulate the Government for its goal of promoting home ownership and improving economic opportunities for remote Indigenous Australians, research suggests that the current approach will only be successful in a small number of Indigenous communities.

Well situated communities that are already well resourced, with good personnel and sound governance structures are most likely to attract investment and access government grants and subsidies. Communities on marginal land, with poor community infrastructure, low levels of English literacy and no history of private enterprise will continue to be economically isolated.

And while the Government's home ownership scheme will assist some Indigenous people to purchase their own homes, it will end up transferring the considerable costs of maintaining 'low cost' houses in the harsh conditions of remote Australia on to low income Indigenous families.

There are, however, alternative approaches to generating sustainable economic development in remote Australia. The *2006 Native Title Report* includes case studies of Indigenous communities that have been able to generate economic development at the same time as building local skills and capacity.

The case studies highlight the value of involving Indigenous peoples in policy development, implementation and agreement-making and demonstrate that the best outcomes for Indigenous peoples are achieved when agreements are informed by principles and practices that support Indigenous self determination.



*The Yarrabah Road Gang.  
Courtesy of Yarrabah Aboriginal Shire Council.*

# on Indigenous land

## BUILDING A SOLID FUTURE: THE YARRABAH HOUSING PROJECT

Located in Far North Queensland, close to Cairns, Yarrabah is an example of an Indigenous community determined to manage the development of its township and generate economic growth.

Like the Australian Government's model, the Yarrabah Housing Project is based on the principle of creating individual leases on communal land and encouraging Indigenous home ownership.

The key difference, however, is that the Yarrabah Aboriginal Shire Council, rather than a government body, will hold a 99 year headlease over the Yarrabah Township. The headlease will be held in trust for the traditional owners and the Council will also manage the subleases for Yarrabah residents and businesses.

The Council and the community believe that home ownership is the best way to provide an economic future for local residents and to reduce the community's dependence on government funding for housing.

The Council is currently developing a lease proposal and a town plan. It also plans to manage a large-scale housing construction project for the township through its own construction company, Y-Build. The company will employ, train and develop a local Indigenous workforce with the skills to build and maintain Yarrabah's housing stock.

The Yarrabah Housing project is still in its early stages. However, the Council is discussing all

aspects of the project with the community. Each decision – from leases and land tenure through to the residential planning – is made with the informed participation of Yarrabah residents.

**For more examples of good practice in generating sustainable economic development, see Chapters 3-7 of the *Native Title Report 2006*.**

## NATIONAL SURVEY: TRADITIONAL OWNERS ON LAND AND LAND USE

Last year I conducted a national survey of Indigenous traditional owners and their representative bodies to record their views and experiences regarding economic development on their land.

The survey found that the top priority for traditional owners is maintaining their custodial responsibilities and being able to either live on, or access, traditional land.

They welcomed the potential for economic development but many said they lacked the capacity or support to develop their ideas into a commercial enterprise.

The survey also found that:

- there is no reliable research to identify the needs and aspirations of traditional owners
- most traditional owners do not have a good understanding of the agreements on land
- bodies with responsibility or potential to progress economic development are not funded to do so and have numerous statutory obligations that consume time and resources
- less than half the Native Title Representative Body respondents said they were accessing funds specifically targeted to generate economic development.

**For more detailed survey results, see Chapter 1 of the *Native Title Report 2006*.**



*Aerial view of Yarrabah.  
Courtesy of Yarrabah Aboriginal Shire Council.*

# Assessing the new arrangements

AN IMPORTANT PART OF MY ROLE IS TO MONITOR the impact of the Australian Government's "new arrangements for the administration of Indigenous affairs" on the lives of Aboriginal and Torres Strait Islander peoples.

These new arrangements have been in place since July 2004. The central goal is to address disadvantage by reducing the barriers that prevent Indigenous peoples from accessing mainstream government services on an equal basis.

Some elements of the new arrangements – such as the establishment of Indigenous Coordination Centres (ICCs) in regional areas and the appointment of 'solution brokers' – have the potential to achieve positive results and deliver Indigenous-specific and mainstream services in a complementary way.

And the move towards developing comprehensive and coordinated regional agreements to address identified community needs is also sensible and timely, despite the slow progress in finalising these agreements.

It is clear, however, that there are a number of structural problems with the new arrangements, including:

- the lack of effective participation of Indigenous peoples in policy development and agreement making
- the tendency for Indigenous-specific programs to be a *substitute* for mainstream programs, rather than a *supplement* to them
- a focus on improving access to mainstream services for remote Indigenous communities,

without a similar focus on the needs of Indigenous peoples living in urban and regional areas

- no overarching framework of benchmarks or indicators to assess whether or not more Indigenous people are accessing mainstream services.

A rigorous system of monitoring and review is needed to ensure that the new arrangements deliver improved results for Indigenous peoples. I have recommended that a federal Parliamentary Committee of Inquiry be established to report every two years on the progress of the new arrangements and whole-of-government service delivery to Indigenous Australians.

I have also recommended that all governments – federal, state and territory - adopt a human rights based approach (see Chapter 2 for more details) to more effectively implement the new arrangements.

A human rights approach would shift the current government focus regarding program funding away from *process* and *compliance* to one based on achieving beneficial *outcomes* in the lives of Indigenous peoples. It also would build the capacity of Indigenous communities to participate in making decisions that affect them.

## GIVING INDIGENOUS AUSTRALIANS A SAY

The framework for the new arrangements stresses the importance of ensuring 'maximum participation' by Indigenous Australians in contributing to government policies on issues that will affect them.

In many instances, however, Indigenous policy is set centrally and unilaterally by government and then applied to Indigenous people – disempowering Indigenous communities.

Policies, programs and services will only be effective if they are established and provided in ways that we can identify with and own. It is essential then



Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma with Board Members from the NPY Women's Council, South Australia.

that Indigenous communities have a real say in how they are designed, delivered, monitored and evaluated.

### AT THE NATIONAL LEVEL

Over the past year, the Australian Government has continued to use its appointed National Indigenous Council as its primary source of advice on Indigenous policy. It has not sought to engage more broadly with Indigenous communities on matters of policy development that affect our lives.

The result has been a very low level of Indigenous participation in public inquiry processes, such as parliamentary committees, into issues of critical importance to our people. Without effective Indigenous engagement at the national level, we risk further entrenching and exacerbating Indigenous disadvantage in Australia.

Over the coming year I will work with Indigenous organisations and communities to identify sustainable options for establishing a national Indigenous representative body.

### AT THE REGIONAL AND LOCAL LEVEL

The government's current approach to engaging with communities at a regional level is to establish Regional Indigenous Engagement Agreements (RIEA). The guidelines and funding for RIEAs indicate a permanent shift away from engagement with regional Indigenous representative bodies.

Another major element of the new arrangements has been 'direct engagement' with families and communities. While this is a worthy objective, Indigenous peoples are not always in a position of equal power to negotiate with government.

There is an urgent need for credible structures and processes that can support Indigenous communities to engage with governments, be consulted and, where appropriate, give informed consent.

That's why the importance of having Indigenous regional engagement bodies cannot be overstated. The lack of progress in the last year to advance any of the 18 proposed regional models is a significant concern.

**For a more detailed analysis of the new arrangements and strategies to improve Indigenous engagement, see Chapters 2 and 3 of the *Social Justice Report 2006*.**

### FEEDBACK ON SHARED RESPONSIBILITY AGREEMENTS

**SRAs have become a prominent feature of the new arrangements. They are an agreement where government provides something to a community (over and above essential services) on the condition that the community provides something in return (such as changes in behaviour).**

**Last year my Office conducted a national survey of Indigenous families and communities that had entered into SRAs before January 2006. The survey looked at the content of the SRA, the negotiation process and the outcomes. We received responses relating to 67 SRAs – a 62% response rate.**

**The results suggest that SRAs have the potential to create or improve relationships between government and communities when they are done well. Done poorly or without adequate consultation, they can create disenchantment that may prove difficult to overcome in the future.**

# The foundations of good policy – a human rights approach

*THERE NEEDS TO BE A RE-ENGAGEMENT WITH INDIGENOUS AUSTRALIANS ON THE BASIS OF MUTUAL RESPECT AND EQUALITY, WITH CLEAR PROCESSES AND CERTAINTY OF STRUCTURES FOR INDIGENOUS REPRESENTATION AND ADVOCACY.*

*Tom Calma*

A FLAW IN THE AUSTRALIAN GOVERNMENT'S current approach to Indigenous affairs is its centralised, 'top down' approach to developing and implementing policies.

Indigenous policy urgently needs a sound framework – one that is people centred and which recognises the social and cultural diversity of Aboriginal and Torres Strait Islander people.

A human rights based approach to policy is focused as much on how policy is made as it is on achieving positive results for Indigenous peoples.

It is based on the following principles:

- **Commitment to human rights** – all legislation, policies and programs that affect Indigenous peoples should be consistent with international human rights standards.
- **Engagement and participation** – effective frameworks are in place so that Indigenous peoples can participate effectively in making decisions about policies that affect our lives, based on the principle of free, prior and informed consent.



*Tom Calma addresses a forum on Indigenous education at the Garma festival.*

- **Capacity building and community development** – governments and the private sector have a role to assist Indigenous peoples build community capacity in a way which respects Indigenous decision-making processes, authority structures and collective identity.
- **Supporting sound Indigenous governance** – good governance is an important factor in generating sustained economic development but there is no "one size fits all" approach; governance models will vary between communities and evolve over time.
- **Fostering and recognising leadership** – governments and the private sector can lead positive legal and policy change, as well as supporting leaders in Indigenous communities, especially those in the next generation.

A human rights based approach to policy development would also see:

- government agencies sharing information and experience with each other regularly in order to identify effective approaches and learn from mistakes
- government funding set at a sufficient level to address the root causes of Indigenous inequality based on need
- transparent and accountable frameworks in place so that the impact of policies can be accurately measured
- a commitment by government to policy implementation and accountability.

# Indigenous rights on the global agenda

IN RECENT YEARS A NUMBER OF IMPORTANT steps have been taken to recognise and protect the human rights of indigenous peoples at an international level.

Reforms of the United Nations, such as the creation of the Human Rights Council, should also make it easier for Indigenous peoples to have their concerns heard and their rights promoted.

Some of the major international developments include:

- involving indigenous peoples in setting culturally-appropriate indicators for States in meeting the **Millennium Development Goals**
- establishment of the **Second Decade of the World's Indigenous People** (2005 to 2015) which aims to promote international cooperation to tackle problems faced by Indigenous peoples in areas such as culture, education, health, human rights, the environment and social and economic development
- adoption of the **Declaration on the Rights of Indigenous People** by the Human Rights Council on 29 June 2006 after 20 years of development and negotiation.



*Members of the United Nations Permanent Forum on Indigenous Issues, including Mick Dodson, participate in the opening session for 2006.*

The Declaration, currently before the United Nations General Assembly, will be of the utmost importance in combating discrimination against indigenous peoples.

There is widespread consensus on the vast majority of provisions of the Declaration, with only a small group of countries – including Australia – maintaining objections.

Despite these very significant developments, a major challenge remains for Indigenous peoples: getting governments to implement their international human rights commitments in national laws, policies and programs.

In Australia this can be compounded by a lack of understanding about human rights within Indigenous communities and limited engagement or representative structures through which Indigenous Australians can advocate and participate in policy development.

In this environment, Indigenous organisations and other non-government organisations have a responsibility to bridge this 'information gap' and help build community awareness and capacity.

To support them in this work, I will convene an Indigenous People's Organisations Network (IPO Network).

The IPO Network will play a dual role: coordinating the contributions of Indigenous peoples to United Nations forums, as well as sharing information about international developments with Indigenous communities.

I hope that over time the IPO Network will become an important link between international developments and domestic processes and provide practical support to Australia's Indigenous organisations and communities in advocating and promoting their rights.

# Close the gap on health inequality

IN MY 2005 SOCIAL JUSTICE REPORT I LAID OUT a major challenge for federal, state and territory governments: to achieve health equality for Aboriginal and Torres Strait Islander people within 25 years.

It is a national scandal that Indigenous Australians live 17 years less than other Australians and that our babies die at almost three times the rate of non-Indigenous children.

However, rapid improvements can be achieved in health outcomes through comprehensive, targeted and well resourced government action and by working in partnership with Indigenous communities and organisations.

In April 2007, 40 of Australia's leading Indigenous and non-Indigenous health peak bodies and human rights organisations joined forces to launch a campaign to "Close the Gap" on health inequality.

The campaign calls on governments to put in place firm targets, funding and timeframes to address health inequalities, including providing equal access to primary health care for Indigenous Australians within 10 years.

To find out more and to register your support, visit [www.humanrights.gov.au/social\\_justice/health/](http://www.humanrights.gov.au/social_justice/health/)

## MORE ON SOCIAL JUSTICE AND NATIVE TITLE

Call **1300 369 711** to order hard copies and CD-ROMs of the Social Justice and Native Title Reports and for additional copies of this Community Guide.

The *Social Justice Report 2006* is available at [www.humanrights.gov.au/social\\_justice/sjreport06/](http://www.humanrights.gov.au/social_justice/sjreport06/)

The *Native Title Report 2006* is available at [www.humanrights.gov.au/social\\_justice/ntreport06/](http://www.humanrights.gov.au/social_justice/ntreport06/)

If you have comments or feedback please email us at [sjreport@humanrights.gov.au](mailto:sjreport@humanrights.gov.au)

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You can also email us at [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au).



Tom Calma speaks at the Close the Gap health launch, with Olympians Catherine Freeman and Ian Thorpe.