

2011 Social Justice and Native Title Reports

A Community Guide

A note from the Commissioner



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

Both Reports are tabled in federal Parliament. They consider major issues in Aboriginal and Torres Strait Islander affairs over the past year and include recommendations to governments that promote and protect the rights of Aboriginal and Torres Strait Islander peoples.

This year's Reports are my second as the Social Justice Commissioner. They focus on addressing relationships within our own Aboriginal and Torres Strait Islander communities.

This Community Guide gives a brief overview of some of the key issues I consider in the *Social Justice Report 2011* and the *Native Title Report 2011*.

The *Social Justice and Native Title Reports* identify the key developments affecting Aboriginal and Torres Strait Islander peoples over the past year. These include a broad range of issues such as:

- native title reform
- the National Congress of Australia's First Peoples
- constitutional reform and recognition
- the Northern Territory Emergency Response
- giving effect to the *United Nations Declaration on the Rights of Indigenous Peoples*
- the Indigenous Human Rights Network Australia
- the Close the Gap campaign
- the Australian Government's engagement framework and draft Indigenous Economic Development Strategy.

The Reports also start a conversation about lateral violence in our communities and the ways that we, as Aboriginal and Torres Strait Islander peoples, can create the foundations for strong relationships with each other.

Lateral violence, also known as horizontal violence or intra-racial conflict, is created by experiences of powerlessness. It plays out in our families and communities through behaviours such as gossiping, jealousy, bullying, shaming, social exclusion, family feuding, organisational conflict and physical violence.

The thinking behind lateral violence explains that this behaviour is often the result of disadvantage, discrimination and oppression. Lateral violence occurs because we are living within a society that is not designed for our way of doing things.

In starting this conversation about lateral violence in our communities, I have thought long and hard about talking openly about the damage that lateral violence does in our communities. I have also questioned whether I am further contributing to negative stereotypes of our peoples. While this is a view that some may possibly take, I believe that the risk of not doing anything about lateral violence is far greater.

In coming to this view, I have been encouraged by the responses that I have received when I have talked about this issue with Aboriginal and Torres Strait Islander people throughout the country. There seems to be considerable agreement within our communities to confront and deal with lateral violence.

Addressing lateral violence will require courage, goodwill and determination. But I think the gains will be immense. We need to close the gap between Aboriginal and Torres Strait Islander peoples and the broader Australian community. But we cannot do this if we continue to harm each other with lateral violence.

As I have talked about since becoming Social Justice Commissioner, we can only achieve real progress if we have strong and respectful relationships. And the most important relationship for us to get right is with each other as Aboriginal and Torres Strait Islander peoples.



Mick Gooda
Aboriginal and Torres Strait Islander
Social Justice Commissioner



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

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

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

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

Mick has been actively involved in advocacy in Aboriginal and Torres Strait Islander affairs throughout Australia and has delivered strategic and sustainable results in remote, rural and urban environments. He is a senior executive with 25 years experience and a record of attaining high-level goals and leading multi-million dollar service programs and organisational reform.

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

Lateral violence in our Aboriginal and Torres Strait Islander communities

What is lateral violence?

Lateral violence is created by experiences of powerlessness and oppression. It plays out in our families and communities through behaviours such as gossiping, jealousy, bullying, shaming, social exclusion, family feuding, organisational conflict and physical violence.

In the *Social Justice and Native Title Reports*, I start a conversation about lateral violence in our Aboriginal and Torres Strait Islander communities.

Lateral violence has its roots in the colonisation and control of Aboriginal and Torres Strait Islander peoples through:

- powerlessness
- diminishing traditional roles, structures and knowledge
- attacking and undermining Aboriginal and Torres Strait Islander culture and humanity
- creating conflict about Aboriginal and Torres Strait Islander identity.

Although lateral violence has its roots in our history, it thrives today because power imbalances, control by others, identity conflict, negative stereotypes and trauma continue to feed it.

Lateral violence is intrinsically linked to the disadvantage that Aboriginal and Torres Strait Islander peoples face relative to the broader Australian population, as well as the lack of participation that is afforded to them in decision-making. While our human needs are unmet there will continue to be conflict and lateral violence in our communities.

Identity and in particular, notions of 'authenticity' or who is a 'real Aboriginal or Torres Strait Islander person' are powerful weapons in lateral violence. These false divisions about Aboriginal and Torres Strait Islander identity fuel conflict and lateral violence when people step outside of narrow, prescribed roles about what is an 'authentic' identity.

Lateral violence is also linked to negative stereotypes that create low self-esteem. This in turn reinforces the feelings of powerlessness which engender lateral violence. If we feel badly about ourselves, if we believe the negative stereotypes and accept a victim mentality, then we are more likely to lash out in lateral violence.

The reality of lateral violence is that governments cannot and should not intervene to fix our internal relationships. This is simply not appropriate and takes further power away from our communities to be self-determining. However, it is undeniable that governments have had a role to play in the creation of the environments that breed lateral violence.



Painting by Kathryn Dodd Farrawell – *Love Endures All Obstacles*.
Photo: Tom Psomotragos Photography.

This artwork reflects the experience of people living on Palm Island under the Protection Acts. The enclosed Palm tree like bars, some ruled straight, depicts the rigidity for punishment, imprinted on the inner mind and affecting the freedom of speech, sight and movement.

One of the greatest sources of tension and conflict in our communities is the ongoing issue of who speaks for community and to whom governments choose to listen. If governments continue to leave groups out of the engagement process or consult with the wrong people, not only do they miss out on the depth and diversity of views necessary to form good policy, but they also alienate groups from the process, possibly limiting the success of the project. Alienation breeds powerlessness and can manifest in lateral violence.

Lateral violence feeds off conditions where Aboriginal and Torres Strait Islander peoples are characterised as passive, troubled, dysfunctional and unable to help themselves without some form of intervening hand from the government. Unfortunately, governments continue to see Aboriginal and Torres Strait Islander disadvantage from a deficit-based approach – addressing the 'Indigenous problem'. Governments need to move to seeing us as capable and resilient, and work in an empowering way to prevent the conditions that can lead to lateral violence.

Both of the Reports outline examples of lateral violence in Aboriginal and Torres Strait Islander communities. The *Social Justice Report* looks at the historical and contemporary factors in Palm Island, cyber bullying, young people and bullying in schools, organisational conflict, workplace bullying, social emotional wellbeing and involvement in the criminal justice system.

The *Native Title Report* talks about how native title provides a system for lateral violence to be played out within our families, communities and organisations. Although native title can generate positive outcomes for our communities, these outcomes often do not occur because lateral violence fragments our communities as we navigate the native title system.

I think partly it's the way institutions, governments and others structure things, I mean look at the way Native Title for example is, has contributed to the conflict. It has encouraged people to go within themselves more and look for difference, as opposed to connection.

A Koorie worker quoted in R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria* (2010), p 79.

A human rights-based approach to lateral violence

Lateral violence is a human rights issue. The *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration) provides the most promising overarching response to lateral violence.

The Declaration contains the following key principles that underpin our rights and guide us to build stronger relationships within our families and communities.

Self-determination

Self-determination enables our communities to exert control and self-regulate. When realised, self-determination can stifle the toxicity of victimhood and powerlessness.

A self-determining community:

- decides how disputes are resolved
- decides how decisions are made
- decides what protocols for behaviour are acceptable
- takes responsibility to ensure the wellbeing of the entire community.

Participation in decision-making

Our internal processes for making decisions and resolving conflicts break down when we are forced to live with an unequal power dynamic.

Governments, non-government organisations and industry have obligations to ensure that Aboriginal and Torres Strait Islander peoples actively participate in decisions and processes that affect their rights. Processes that affect our communities should build cohesion within our communities – not divide our communities.

The principle of free, prior and informed consent can be used to develop decision-making processes that address lateral violence.

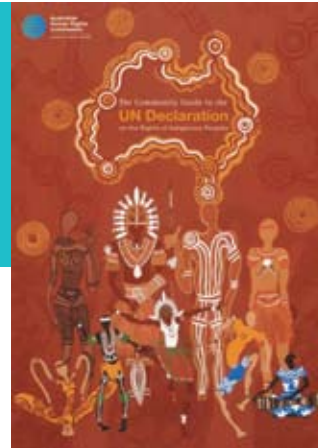
Non-discrimination and equality

Racial discrimination reinforces negative stereotypes about Aboriginal and Torres Strait Islander peoples. Over time these stereotypes can become internalised and lead to lateral violence.

To achieve equality, the structures of society must be reoriented to account for Aboriginal and Torres Strait Islander peoples difference. It is the responsibility of governments and other third parties to accommodate the priorities of Aboriginal and Torres Strait Islander peoples and incorporate their internal decision-making processes.

Respect for and protection of culture

Aboriginal and Torres Strait Islander peoples culture is a source of strength and should instil pride in our communities. However, lateral violence breeds unhealthy cultural norms that undermine the strength we can draw from our cultural identities.



United Nations Declaration on the Rights of Indigenous Peoples

The Declaration characterises culture as dynamic – it can and does change over time. The Declaration also recognises that undertaking cultural activities and maintaining cultural institutions does not exclude us from also participating in mainstream society. The two are not mutually exclusive – we call it walking in two worlds.

An understanding of culture must recognise the diversity within Aboriginal and Torres Strait Islander communities. Non-recognition of this difference feeds into a one-size-fits-all approach to designing and implementing Indigenous policy. This inhibits government engagement from being able to accommodate differences within Aboriginal and Torres Strait Islander communities.

The Declaration guiding our responses to lateral violence

Historical and contemporary drivers of lateral violence	Declaration
<ul style="list-style-type: none"> • Colonisation, oppression and control of Aboriginal and Torres Strait Islander peoples. • Feelings of powerlessness. • Meeting human needs. 	<ul style="list-style-type: none"> • Empowering Aboriginal and Torres Strait Islander communities to take control of their communities and aspirations.
<ul style="list-style-type: none"> • Loss of land, traditional roles, structures and knowledge. • Addressing trauma. 	<ul style="list-style-type: none"> • Promoting and developing community decision-making and dispute resolution protocols.
<ul style="list-style-type: none"> • Internalisation of negative stereotypes. • Meeting human needs. 	<ul style="list-style-type: none"> • Addressing discrimination and negative stereotypes by promoting equality that recognises difference.
<ul style="list-style-type: none"> • Loss of land, traditional roles, structures and knowledge. • Identity conflict. • Internalisation of negative stereotypes. 	<ul style="list-style-type: none"> • Building culture as a form of resilience and strength that promotes healthy cultural norms and recognises differences and diversity.

Tools to address lateral violence



Boab tree. Photo: Thinkstock.

The *Native Title and Social Justice Reports* talk about the following options for us to address lateral violence in our families and communities through establishing strong structural foundations and principles based on the Declaration.

Naming lateral violence

Naming lateral violence is the first step towards exerting control over it. It is also a way of exercising agency and responsibility for our communities. Naming lateral violence becomes an action of prevention.

The conversation around lateral violence is not an easy one. It means confronting those in our communities who perpetrate lateral violence and holding them accountable for their actions.

Naming lateral violence is essentially a process of awareness-raising and education. It is about giving our communities:

- the language to name laterally violent behaviour
- the space to discuss its impact
- the tools to start developing solutions.

Legislative review and policy reform

Legislative review and policy reform assist Aboriginal and Torres Strait Islander communities to address lateral violence by creating structures that promote healthy relationships within our communities and with external stakeholders.

There are three opportunities to give effect to the Declaration and progress legislative review and policy reform. These are to:

- ensure that the unique and inherent rights of Aboriginal and Torres Strait Islander peoples are protected under the National Human Rights Framework
- reform the Australian Constitution to recognise Aboriginal and Torres Strait Islander peoples, and prohibit discrimination on the basis of race
- maintain efforts aimed to create a just and equitable native title system.

If people are brainwashed to think they're inferior then there is a collapse and people begin to act in negative ways and this is served up as proof of 'inferiority'. This gets handed down to our kids who hear it all around. [We] need to remember how great we were and go forward from a position of strength.

A workshop participant quoted in S Gorrings, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 7.

Creating cultural safety and cultural security

Creating structures that are based on our strengths assist us to address the damaging effects of lateral violence on our Aboriginal and Torres Strait Islander communities.

A culturally safe and secure environment is one where our Aboriginal and Torres Strait Islander peoples feel safe and draw strength from their identity, culture and community.

Cultural safety and security requires the creation of:

- environments of cultural resilience within Aboriginal and Torres Strait Islander communities
- cultural competency by those who engage with Aboriginal and Torres Strait Islander communities.

The way our communities operate will always be shaped and informed by external influences. These influences can either empower and support our communities or undermine them. Governments, non-government organisations and industry must be sufficiently culturally competent, extending beyond individual cultural awareness to incorporate systems-level change.

Creating cultural competency

Aboriginal and Torres Strait Islander relationships must be fixed ourselves, from within our communities. However, governments, non-government organisations and industry have responsibilities to:

- remove the road blocks that inhibit Aboriginal and Torres Strait Islander peoples from taking control
- refrain from actions and processes that divide us
- create environments where our cultural difference is respected and nurtured
- remove the structural impediments to healthy relationships in our communities.

Dealing with lateral violence in action: case studies

Solid Kids, Solid Schools

Yamatji communities in the mid-west region of Western Australia have been developing innovative ways to prevent bullying amongst young people.

The *Solid Kids, Solid Schools* project began in 2006 and grew from the need for information about the experience of bullying of Aboriginal children.

Solid Kids, Solid Schools is an example of best practice in conducting research with Aboriginal and Torres Strait Islander communities. The research showed that bullying and primarily, intra-racial bullying, was a pervasive problem for Yamatji children, with serious consequences for their education and community life.

The quality of community engagement and the creation of a culturally secure environment has meant that the voices of Yamatji children, young people, parents and Aboriginal and Islander Education Officers are reflected in the programs created through this process.

The *Solid Kids, Solid Schools* website (www.solidkids.net.au) is a dynamic source of information about bullying, with pages written directly for children and young people ('Solid Kids'), parents and care givers ('Solid Families') and schools ('Solid Schools').

The 'Solid Kids' web page has easy-to-read, age appropriate information including practical ways children and young people can get help with bullying. It also provides a place for creative expressions on bullying.

The poem 'Diva Chat' is by Nola Gregory, a well-respected Aboriginal youth worker.

Diva Chat by Nola Gregory

Snide remarks and innuendo
Running rampant in our town
They say it's in the name of fun
To run somebody down
But it's not that funny to those out there
Who constantly put up with the crap
To have to wear your unkind remarks
When you sink as low as that
That diva chat they say it's great
And it's really cheap as well
They get on there and go to town
their stories they love to tell
but do you people realize

your hurting someone out there
with your unkind words
and trash talk
do you give a damn, do you care

I don't know if you know this
But to be on diva chat
You have to be 18 years old
Did any of you know that
All it starts is trouble

In the end the fights will start
So how about you stop and think
Before you play your part.

N Gregory, 'Diva Chat' in *Solid Kids – Solid Schools – Solid Families, Yarn Now! Comics*, www.solidkids.net.au/index.php/comic/



Main Beach, Point Lookout, North Stradbroke Island. Photo: Thinkstock.

Quandamooka Peoples native title consent determination

On 4 July 2011, the Quandamooka Peoples native title rights and interests were recognised over their lands and waters on and surrounding North Stradbroke Island, and some islands in Moreton Bay. More than 16 years after the Quandamooka People lodged their native title claim, this occasion marked the first native title determination in southern Queensland.

This positive outcome for the Quandamooka Peoples does not reflect the long and at times, difficult process that has been experienced by the native title claim group.

For the Quandamooka Peoples, the 70 year history of sand-mining on North Stradbroke Island has created bitter relationships within the community between those families who financially have benefited from employment by the mining companies and those families that have believed that sand-mining should stop because of its devastating impact on their Island. Native title meetings provided another forum for old fights about mining to take on a renewed energy.

So, how did the Quandamooka Peoples deal with these issues that cause fights within their community?

The Quandamooka Peoples developed a clear and transparent decision-making process to enable them to deal with issues to negotiate their native title claim. This process includes representatives from each of the families who are in the native title claim group. These representatives advised the single named applicant during the native title negotiations.

Decisions by the applicant required the mandate of the family representatives, who agreed on issues by consensus. Any issues that were disputed and could not be resolved by the group of family representatives were taken to the Council of Elders. The Council of Elders comprises female and male Elders who represent each of the family groups.

The Quandamooka Peoples have ensured that this inclusive structure of decision-making continues in Yoolooburrabee Aboriginal Corporation, which has been set up to manage their native title rights.

The year in review

Social Justice Report 2011

In the first Chapter of this year's *Social Justice Report* I reflect on the events that have taken place in the Reporting Period (1 July 2010 – 30 June 2011). I also follow up on my recommendations from the *Social Justice Report 2010*. On reflection I see cause for optimism whilst also acknowledging there are still some areas that remain a concern.

The year in review is signposted by some significant developments impacting on Aboriginal and Torres Strait Islander peoples' exercise and enjoyment of their human rights. My review of these developments has been conducted in the context of giving full effect to the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration). In particular I use its key principles of: self-determination; participation in decision making; non-discrimination and equality; and respect for and protection of culture, to guide this process.

Over the last year we have reached some major milestones. For instance, we have seen the election of the two co-chairs and a board to the National Congress of Australia's First Peoples and we are also now engaged in a conversation with the Australian people about how we go about recognising Aboriginal and Torres Strait Islander peoples in our Constitution.

I also discuss the progress of the Indigenous Human Rights Network Australia, the Australian Government's engagement framework and the Close the Gap Campaign for Health Equality.

It hasn't all been positive. Marking 20 years since the landmark Report of the Royal Commission into Aboriginal Deaths in Custody was no cause for celebration. Recognising more Aboriginal and Torres Strait Islander people are in prison now than when the Royal Commission reported in 1991 provided a sobering backdrop for some of the other steps forward in Indigenous affairs throughout the year.

I also consider the challenging circumstances facing Aboriginal and Torres Strait Islander peoples and communities in Alice Springs.

And fittingly, as the end-date for laws introduced under the Northern Territory Emergency Response regime approaches in August 2012, I review the recent consultation process and urge the Government to listen to our Indigenous communities.

Native Title Report 2011

In the first Chapter of this year's *Native Title Report* I review the key developments in native title during the Reporting Period. In particular I focus on how these developments impact on Aboriginal and Torres Strait Islander peoples in exercising and enjoying their human rights.

I am guided by the Declaration in this review.

I review a number of legislative changes, consultation papers and some significant moments which mark the ongoing operation of the *Native Title Act 1993* (Cth). I also consider developments at the international level which impact on our rights to our lands, territories and resources. In doing so I consider what, if any improvements, have been made or have the potential to be made to the native title system as a result.

Some key points of review include the Native Title Reform (Amendment) Bill 2011, the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), the release of the *Leading practice agreements: maximising outcomes from native title benefits* Discussion Paper and the registration of the 500th Indigenous Land Use Agreement.

Finally, in what will be the first in a series of annual 'Report Cards', I provide an assessment of the Australian Government's performance across a range of issues, including its progress towards implementing my recommendations from the *Native Title Report 2010*, and draw some concluding observations about progress made during the Reporting Period.

Overall, this year's Native Title Report reveals the 'year in review' as being one of mixed results for Aboriginal and Torres Strait Islander peoples trying to navigate the native title system.

More on Social Justice and Native Title

The *Social Justice Report 2011* is available at:
http://www.humanrights.gov.au/social_justice/sj_report/sjreport11

The *Native Title Report 2011* is available at: http://www.humanrights.gov.au/social_justice/nt_report/ntreport11

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

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

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