



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

2008

Essentials for Social Justice



Speeches by the Aboriginal and
Torres Strait Islander Social Justice
Commissioner Tom Calma





Essentials for Social Justice

Mr Tom Calma

Aboriginal and Torres Strait Islander Social Justice Commissioner Australian Human Rights Commission

Between December 2007 and November 2008 the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, delivered a series of key speeches setting out an agenda for change in Indigenous affairs.

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www.humanrights.gov.au/about/media/speeches/social_justice/index.html

1. Essentials for Social Justice: Sorry

11 December 2007

Customs House Library, Sydney

Launch of Us Taken-Away Kids: commemorating the 10th anniversary of the Bringing them home report

The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs; Professor Mick Dodson, Co-Chair of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Peoples from their Families and Co-Chair of Reconciliation Australia; Helen Moran, Chair of the National Sorry Day Committee; Mark Bin Barkar, Deputy Chairperson, National Stolen Generations Alliance; My fellow speakers - Alec Kruger, Jeannie Hayes, Alfred Coolwell and Lena Yarrey;

Contributors to the *Us Taken-Away Kids* magazine¹ – Lorraine McGee-Sippel, Elaine Turnbull, Robert Stuurman, Bev Lipscombe, Mary Hooker, Emily Bullock and Charles Leon;

Members of the stolen generations; Representatives of Link Up, Sorry Day Committees and Reconciliation groups; My Aboriginal and Torres Strait Islander brothers and sisters; and Friends.

I begin by paying my respects to the Gadigal peoples of the Eora Nation – the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you, Alan Madden, for your generous welcome for all of us to Gadigal country.

Thank you also to the City of Sydney for your assistance with this launch, and for providing this venue.

On behalf of the Human Rights and Equal Opportunity Commission (HREOC), can I welcome you to the launch of *Us Taken-Away Kids* – a magazine commemorating ten years since the *Bringing them home* report² was released – as well as the updated *Bringing them home* online educational resources.

The release of these materials brings to a close a year of activities by HREOC for the tenth anniversary of the *Bringing them home* report.

The timing of the release of these materials could not be better.

Yesterday, we celebrated Human Rights Day. That is a time when we honour the legacy of the *Universal Declaration of Human Rights 1948*, the modern world's '*Magna Carta*'.

¹ http://www.humanrights.gov.au/bth/taken/us_taken_away2007.pdf

² http://www.humanrights.gov.au/pdf/social_justice/bringing_them_home_report.pdf

The language of the Universal Declaration encapsulates, in the most poetic and moving way, the aspirations of generations of peoples worldwide for peace and harmony. And it is directly relevant to the continuing circumstances of the stolen generations. The Universal Declaration reads:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, (and) in the dignity and worth of the human person ...,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,...

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations...

Human Rights Day is also the time where we celebrate the achievements of our fellow Australians in contributing to the realisation of these goals.

I am delighted that joining us here today we have Mark Bin Barkar and Alec Kruger – two men who were honoured at the Human Rights Awards yesterday for their contribution to the promotion of human rights in Australia for work that predominately relates to the stolen generations. Congratulations to both Mark and Alec, and thank you.

The timing of the release of *Us Taken-Away Kids* could also not be better as it comes at a time of great importance to the future of our nation.

The incoming Prime Minister, the Honorable Kevin Rudd, has indicated that he intends to apologise on behalf of the nation to the stolen generations.

So in the coming months, the Prime Minister and his government will have a historic opportunity to unite Australia by acknowledging the existence and the impact of this dark aspect of our history; by paying respect to the stolen generations for their suffering, their resilience and their dignity; and by laying the foundations for a reconciled Australia, built on respect for human rights and a commitment to social inclusion.

Unfortunately, we are all too aware that this is not a once in a lifetime opportunity. This great challenge has been laid before the federal government once before, and on that occasion, it did not seize the opportunity. So this moment represents a very rare thing - a second chance.

In the words of the Universal Declaration, this moment is a test – for the nation - of how truly we believe in the inherent dignity and the equal and inalienable rights of all members of the human family.

In reflecting on the *Us Taken-Away Kids* magazine that is being launched by the Minister for Indigenous Affairs here today, I intend to outline an agenda for addressing the outstanding issues faced by the stolen generations and key elements for the apology.

This speech is the first in a series of six that I will be delivering nationally over the next four and a half months outlining an agenda for change across all areas of Indigenous affairs.

I have termed this series of speeches *Essentials for Social Justice*. Subsequent speeches will address issues ranging from the very serious problem of a lack of engagement with Indigenous peoples in policy making and significant failures in the whole of government machinery currently in operation federally; to the Northern Territory intervention and child abuse issues; to a positive vision for our communities such as by *Closing the Gap* in life expectancy, and creating an equal life chance for Indigenous children.

It is appropriate that today's speech, the first in this series, is simply titled: 'Sorry'.

So let me begin by reflecting on the *Us Taken-Away Kids* magazine. At the beginning of the magazine is a quote from the autobiography of Alec Kruger called, 'Alone on the soaks'. It reads:

As a child I had no mother's arms to hold me. No father to lead me into the world. Us Taken-Away Kids only had each other. All of us damaged and too young to know what to do. We had strangers standing over us. Some were nice and did the best they could. But many were just cruel nasty types...

Many of us grew up hard and tough. Others were explosive and angry. A lot grew up just struggling to cope at all. They found their peace in other institutions or alcohol. Most of us learnt how to occupy a small space and avoid anything that looked like trouble. We had few ideas about relationships. (but) No one showed us how to be lovers or parents. How to feel safe loving someone when that risked them being taken away and leaving us alone again.

Everyone and everything we loved was taken away from us kids.

The *Us Taken-Away Kids* magazine tells the stories of Indigenous Australians removed from their families. It reflects on experiences of being removed and life in foster-care and homes, stories of discovering what had happened, of meeting their family for the first time, piecing together family histories as adults, and of some who have still to re-unite.

The magazine contains the stories, poems, photos and artwork of the stolen generations. For many, it is the first time they have shared their experiences in this way.

This is something that HREOC, and I personally, am extremely grateful for. I think it is both extraordinarily generous and brave. And in my view, it is something that we should all respect as a contribution to reconciliation.

The magazine is a testament to the resilience of the stolen generations. By acknowledging this resilience and the hardship faced, we acknowledge the ongoing impact of our history on the lives of our fellow Australians.

By recognising and paying respect to this, the magazine provides hope that as Australians we can move forward united on a basis of mutual respect, trust and good faith.

As the stories and poems reveal, the experiences of the stolen generations differ significantly. Some people have reconnected with their families and found peace. For others, the passage of time has been too great and they have discovered their family

history too late. So the contributions in the magazine range from angry to funny, from deeply upsetting to reflective, and to uplifting.

The magazine vividly demonstrates the ongoing impact of forcible removal policies in the lives of Indigenous families. This is not an abstract debate about the past. It is about Australia, right now.

And the stories in the magazine highlight that this impact is raw and emotional.

Page 13 of the magazine tells the stories of Lena Yarry and Alfred Coolwell – siblings who were reunited later in life. Their stories are accompanied by an extremely poignant photo which shows Alfred meeting members of his family for the very first time.

Page 15 reproduces a poem by Vickie Roach about her friend ‘Jap’ who died in police custody some time ago. The magazine was provided in advance to Jeannie Hayes a contributor to the magazine and who will speak to us shortly about her experiences. Upon reading the magazine she told HREOC that she too had been good friends with Jap and was moved to see her being remembered in this way. She has never met Vickie Roach.

On pages 27-29 Eddie Thomas reflects on his experience of speaking in the Tasmanian Parliament upon the passage of the stolen generations compensation legislation late last year. This is contrasted with Eddie’s story on page 50 of the magazine in which he recounts when he first met his brother as he was about to play AFL, and how he played the game of his life to make his brother proud, and the sadness that ultimately prevailed over his brother’s life.

The magazine is full of moving stories like these. And I repeat how privileged we are to be invited to share in them.

Story telling – such as that in the magazine - is crucial to Aboriginal and Torres Strait Islander peoples. It is integral to the maintenance of our cultures and It helps us to understand our heritage. And it is critical in defining our identity.

The story-telling tradition of our peoples is one of the great strengths of our cultures. It contributes to our resilience as peoples as it has throughout millennia.

But we don’t tell stories for the sake of it.

For the stolen generations, story telling is an indispensable part of both recognising the suffering of the past and its impact into the present; and of creating the basis for the journey of healing to begin.

And this is the significance of the apology.

What many people have failed to understand over the past decade has been the emotional harm that has been caused by the refusal to say sorry. On the face of it - a simple act – described in denigrating terms by some as merely a ‘symbolic’ action.

For many of the stolen generations, it is so much more than this.

The refusal to apologise has amounted to a denial of the life experiences of many of the stolen generations. They have not been able to tell their story in order to heal.

This has been reflected in vicious debates about whether children were stolen or saved. In debates about whether an 'X' on a page amounts to 'consent' to removal and therefore invalidates a person's claim to being forcibly removed.

And it is reflected in legal actions that have demonstrated the manifest inadequacy of addressing these issues through litigation. Such litigation, at great cost and emotional toll, has found that the legal system under which children were removed was so broad and sweeping in its scope, that there are hardly any circumstances in which a child's removal would be considered 'unlawful'. No duty of care has been found to be owed to a child removed – something that is also quite extraordinary.

The apology issue has led to a denial of the experiences of the stolen generations, and of peoples' identity. And it has played a real role in perpetuating the harm of the past.

An analogy to the harm this has created is how, as a nation, we treated our Vietnam veterans. Because of the divisiveness of the war, it took almost a generation before the Australian public as a whole was able to embrace our veterans as heroes who had sacrificed much in the name of our country.

The mental anguish caused to Vietnam veterans from their treatment is well documented. And the consequent feeling of belonging that they have felt when such recognition did finally flow is also well known. There was also a broader feeling of healing and pride that was felt by Australian society, as a whole, once we had faced up to this and finally embraced our war heroes.

And this is the importance of the apology. By acknowledging and paying respect, those who have suffered can move forward, to heal and ultimately to belong.

The apology will directly benefit members of the stolen generations by validating their experiences. And it will also benefit Australian society as a whole by building a bridge for a reconciled Australia, where we can all feel proud that our national story and aspirations are shared, and that we are prepared to face difficult and dark experiences from our past.

It is not about black armbands and guilt. It is about inclusion and learning from the past. And ultimately, it is about providing space in the telling of our national story for the stolen generations.

I must say I was deeply concerned when I saw the Guide to the teaching of Australian History in Years 9 and 10 released a few months ago under the auspices of the former Prime Minister as part of his push for national education curricula³. This guide identifies the importance of considering Indigenous perspectives on dispossession and European settlement up to 1850, and also encourages students to consider 'missionary and colonial activity directed to the 'protection' of Indigenous Australians', up to 1900. But it makes no direct reference to considering the experiences of the stolen generations over the course of the 20th century nor does it refer to *Bringing them home*.

This is quite simply a denial of history – leaving the issues unspoken. This must cease, and the apology will go a long way to setting us on a course for this to occur.

³ <http://www.dest.gov.au/NR/rdonlyres/0B8BB929-AD4F-4A1E-8CDB-F73AB8E312A4/18868/Guidetoteachinghistory.pdf>

On page 65 of the magazine there is a poem by Yveane Fallon called "I am to be" which reflects the dangers if we continued such denial. In parts it reads:

*I am to be
Your history's ghost returned
Haunting every moment
Despite your concerns.....
I am
The offspring of my ancestors
Bearing truth's memory
Despite all of yours.*

So to conclude, let me outline six key challenges for saying sorry and moving forward together.

First, the apology must be done in a consultative and respectful manner.

For the government, this requires that the views of the stolen generations should be given prominence in determining the key elements of the apology.

We know that there is certain wording – or at least, a certain word - that must be included in the apology for it to have meaning for the stolen generations. It requires more than this one word though. There is a challenge to get the balance right between saying sorry for the practices of past governments and taking responsibility, as the present government, to address ongoing impacts and lead the nation to a better, shared future.

For the stolen generations, ultimately the apology must be written by the government for it to have any meaning. So there is a limit to how far this consultation should stretch.

Second, the apology should be specifically about forcible removals.

The purpose of the recommendation in *Bringing them home* is to apologise for policies of forcible removal and consequent harm, as well as to provide guarantees against repetition in the future.

This is a very specific purpose. I note, even in the past fortnight, that some of the far right commentators who seem to dominate the opinion pages of our newspapers have presented this issue as about anything that has ever happened in Australia since colonisation, or as providing a shield against any child being removed from circumstances of neglect or abuse, into the future. This is in my view, mischievous, misleading and disrespectful.

It is timely for people to return to the exact wording of the *Bringing them home* report to remind ourselves of the exact purpose of saying sorry. It is not a catch all, and it is not intended to overcome the need for other action.

Third, the apology should be done in such a way that it unifies the nation, rather than divides it.

I have great faith that leadership from the highest levels of both sides of politics can ensure that this will occur.

I note, for example, comments by the Shadow Minister for Indigenous Affairs, Mr Tony Abbott at Sorry Day commemorations in May this year. He stated:

The forcible removal of Indigenous children from their families is an episode in our history of which we are rightly ashamed... There were some good intentions, if misguided, behind the policy. Still, the fundamental premise on which it was based - that children were better off away from their black families - was wrong, indeed repugnant. It was a policy based on race not reason. We should have known it then. We certainly know it now, and we do have to atone for it.

Similarly, the incoming Leader of the Opposition Dr Nelson has stated that we all have a responsibility 'to understand what happened in the past' and that we 'should feel immense sorrow, in some cases shame'.

Dr Nelson has expressed concerns about the apology, in terms of not being personally responsible for events of the past, but he has also stated he will wait and see before deciding whether bi-partisan support can be provided for the apology.

There is not too much of a distance to travel to obtain bipartisan support for the apology. However, respectful dialogue will be necessary to achieve this.

The apology will be all the more powerful for being from the Australian Parliament. As it stands, our national parliament is the only one across the country that has not formally apologised to date.

Fourth, the apology should also be forward looking and set out an aspiration for a united future for all Australians.

While the apology should be specific to stolen generations, it should also affirm the commitment of the federal Parliament to partnerships with Indigenous peoples and to continuing to work to address the legacy of the stolen generations.

While the apology will have a significant transformative and healing effect of itself, it will be necessary for it to be accompanied by other measures that implement the full scope of the recommendations of *Bringing Them Home*.

We can expect, for example, that the apology will enable many of the stolen generations to break the cycle of grief that dominates their current situation. They will then be ready, and will need the support to heal. As was noted with the 10th anniversary celebrations for *Bringing them home* in May, there are many aspects of the report that remain to be implemented and provide a holistic address to the needs of the stolen generations.

Fifth, the apology should not be rushed.

An artificial deadline should not be set for the timing of the apology. The timing should reflect that the elements discussed above have been met: that is, respectful dialogue has taken place; and the process has aimed to build consensus and unify the nation.

The stakes are too high to get it wrong by rushing it through, or not allowing the conversation for reconciliation to take place. Without being prescriptive, it may be that Sorry Day in May 2008 provides the ideal timing.

The apology should, in my view, occur separate to discussions regarding Constitutional reform – including a new preamble to the *Constitution*. But it is clearly a necessary precursor to that broader discussion. The impact of a new preamble would also be to provide a sense of inclusion for all Indigenous peoples that is missing from the framework of our legal system at present.

Sixth, and finally, the apology should provide a catalyst for the states and territories to be held accountable for their responsibilities in implementing *Bringing them home*.

The absence of an apology from the federal Parliament has left the federal government without authority to drive the implementation of the *Bringing them home* report.

The apology should therefore form the basis for a renewed partnership between the federal government and state and territory governments to fully implement the report.

For example, only Tasmania has introduced a scheme to compensate for the impact of its forcible removal policies.

It is interesting to note by comparison that at present the Queensland government has introduced the Redress Scheme to provide ex gratia payments to people who experienced abuse and neglect as children in Queensland institutions. Up to \$100 million is being made available for payments, for legal and financial services to applicants, and for practical assistance in completing applications.

It is not inconceivable to see how such a scheme could become a model to address the experiences of the stolen generations.

All governments are responsible for the report's implementation. It is timely for the federal government to take a leadership role in developing a national reparations process to be co-funded by the states and territories. And this should be a priority for Council of Australian Governments (COAG) to build on the work that is already under consideration by the ministerial council for Aboriginal and Torres Strait Islander Affairs.

So let me conclude by returning to *Us Taken-Away Kids*. I want to finish by quoting a contributor to the magazine: George Toongerie. George said:

When societies or cultures collide it is often the children who suffer most... The past cannot be changed but some of the wounds can be healed. The process of reconciliation must start with a candid recognition of what took place – the forcible removal of many Aboriginal children from their parents and communities.

The apology has the potential to be a landmark event in 'righting' relations between Indigenous and non-Indigenous peoples in this country, by setting us on a new shared path to the future and by laying the platform to take the reconciliation agenda to the next level.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.

2. Postscript: ‘Let the healing begin’ – official response to the Prime Minister’s national apology to the Stolen Generations

Wednesday, 13 February 2008

Member’s Hall, Parliament House, Canberra

Prime Minister, the Hon Kevin Rudd; Opposition Leader, Brendan Nelson; the Minister for Indigenous Affairs, the Hon Jenny Macklin; former Prime Ministers, Professor Bruce Wilson representing the late Sir Ronald Wilson, Stolen Generations patrons Dr Lowitja O’Donoghue and Bobby Randall, NSDC Chair Helen Moran and SGA Chair Christine King, Ministers; Members of Parliament; Senators, members of the stolen generations and your families; my Indigenous brothers and sisters; and distinguished guests from around Australia and overseas.

May I begin by acknowledging the Ngunnawal peoples – the traditional owners of the land where we meet today and pay my respects to you and to your elders.

I have been asked by the National Sorry Day Committee and the Stolen Generations Alliance; the two national bodies that represent the Stolen Generations and their families, to respond to the Parliament’s Apology and to talk briefly about the importance of today’s events.

I am deeply honoured to be entrusted with this responsibility and to participate in today’s proceedings.

I am particularly honoured to do so in my capacity as Aboriginal and Torres Strait Islander Social Justice Commissioner at the Human Rights and Equal Opportunity Commission. The inaugural Social Justice Commissioner, Professor Mick Dodson, was the Co-Commissioner of the national inquiry, along with the then President, the late Sir Ronald Wilson, that culminated in the *Bringing them home* report. The next Social Justice Commissioner, Dr Bill Jonas, contributed greatly to the understanding of the report and the importance of its findings.

Today is an historic day.

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.

Let me tell you what this apology means to me. For many years, my family has been searching in vain to find information about my great-grandmother on my father’s side, who was taken at the turn of the 20th Century.

Recently, Link Up in Darwin located some information in the archives. In a document titled 'list of half-castes in the NT' dated 2 December 1899, a government official named George Thompson wrote the following about my great-grandmother:

Half caste May is a well grown girl, is living with her mother in the black's camp at Woolwonga, her mother will not part with her, she mixes up a great deal with the Chinamen, she only has a narga on.

My great-grandmother's ordeal was not un-common and nor was the chilling account - 'her mother *will not part with her*'.

This 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.

For today is not just about the Stolen Generations - it is about every Australian.

Today's actions enable every single one of us to move forward *together* – with joint aspirations and a national story that contains a shared past and future.

It is a matter of great sadness that the experiences of the Stolen Generations have been used as a source of division among the Australian community since the release of the *Bringing them home* report. There are many individuals who have made their name as 'Stolen Generations deniers and rebuffers'.

This vitriol has re-traumatised many of the Stolen Generations. It has cast doubts on the integrity of many individuals, and ultimately has denied Indigenous people basic human dignity and decency.

These are not traits associated with 'the Australian way'. Nor is it any way to respond to human tragedy.

Let us feel proud that we are now facing the difficult and dark experiences from our past in order to move forward.

Let us also feel proud that – as a nation - we respect our fellow citizens, we care for their plight and we offer our hand in friendship so that we may all enjoy the bounty of this great nation.

Prime Minister, can I thank you for your leadership on this issue and for the support and compassion of your Minister, Jenny Macklin.

It is far more difficult to try and unite people than to divide them.

Your efforts should be praised universally for attempting to create a bridge between the many diverse elements of our society.

To the leader of the Opposition, can I also acknowledge your leadership. It is of great significance that this motion was passed with bipartisan support.

For too long, Indigenous peoples have been used as a political football. More often than not, this has promoted fear, misunderstanding intolerance and inaction.

And to all Parliamentarians, I say – let today be a new beginning, not an end point.

Last month, I facilitated discussions between the government and Stolen Generations groups about the apology. The overwhelming message from those meetings was that this should be seen as the first step in a partnership.

The Stolen Generations have needs that have yet to be met, mainly due to under-funding of Link Ups and other support organisations. There remains a pressing need for specific assistance tailored to the particular circumstances of those forcibly removed from their families.

And there are many recommendations of the *Bringing them home* report that have not been implemented.

In fact, there has been little attempt to even consider many of these recommendations at the federal or state level in recent years, or for them to be implemented systematically across all jurisdictions. To the Premiers and state and territory government representatives here today, we urge you to join the partnership to address the unfinished business.

Prime Minister, I mentioned earlier that it is harder to try and unite people than it is to divide them. This is because if people have hope, they also have expectations.

The consultations between your government and Stolen Generations groups identified a number of elements to build upon from today. These include:

- committing to a partnership with Stolen Generations groups, as well as Link Ups and other service providers, with ongoing consultation and participation;
- committing to a comprehensive government response to the needs of the Stolen Generations, as identified in the *Bringing them home* report; and
- adopting a whole-of-government approach – across departments and across governments – to achieve this.

There is much hope that today's apology can create the impetus for a renewed partnership between the federal government and state and territory governments to fully implement the recommendations of the *Bringing them home* report.

It is timely that the federal government take a leadership role in developing a national process to make this happen.

Finally, can I acknowledge the support of the many millions of non-Indigenous Australians who have walked with us on the path of reconciliation and justice, and can I pay tribute to the members of the Stolen Generations, for your incredible resilience, stoicism and dignity in the face of untold suffering.

Let your healing, and the healing of the nation, begin.

Thank you.

3. Essentials for Social Justice: Reform

20 February 2008
Brisbane

I begin by paying my respects to the Jagera and Turrubual peoples, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you, for your generous welcome to country for all of us.

Can I thank Monique Bond for the invitation to address the Queensland branch of Australians for Native Title and Reform (ANTAR) tonight. ANTAR has played a vital role in building community support for Indigenous issues and reconciliation, so it is always a pleasure to be able to support your efforts.

Importantly, you have also played a vital role in celebrating and help build upon the successes in Indigenous communities. This provides hope and recognition for our people and communities. We need this. Our peoples live in often difficult circumstances and face largely negative perceptions of them in the mainstream media. Passionate friends like you are a valuable thing.

This speech is the second in a series of six that I will be delivering nationally over the coming months outlining an agenda for change across all areas of Indigenous affairs. I have termed this series of speeches *Essentials for Social Justice*.

The first speech in this series was delivered in December last year and outlined an agenda for addressing the needs of the stolen generations and the delivery of a national apology.

Speeches in the coming months will address the Northern Territory intervention and child abuse issues; the importance of land and culture in creating economic development; as well as speeches outlining a positive vision for our communities such as by *Closing the Gap* in life expectancy and health status, and creating an equal life chance for Indigenous children.

Today's speech is simply titled: '*Reform*'.

There are a range of issues that I want to explore tonight about the ability of governments to effectively deliver services to Indigenous people and communities, and ultimately, their ability to contribute to improved outcomes in the life circumstances of Indigenous peoples.

For I believe that we have reached a crossroads in Indigenous policy and service delivery.

Issues of Indigenous disadvantage and dysfunction are before our eyes more frequently and more prominently than ever before.

Barely a day goes by without another chilling and heartbreaking story of abuse, violence or neglect; or of demonstrations of the impact of entrenched poverty and despair among our communities. This creates a momentum for change and for action.

Governments of all persuasions and at all levels have expressed a determined commitment to address these issues, particularly as they relate to family violence and child abuse, and to contribute to a better future for Indigenous people.

And yet the means by which they seek to achieve this have had, at best, limited success.

The capacity of government to deliver on its commitments is the proverbial 'elephant in the room'.

Ultimately, I believe that the true legacy of the previous federal government for Indigenous affairs lies not in the NT intervention experiment, as significant as that is, but in the system for administering Indigenous affairs that it created in the ashes of Aboriginal and Torres Strait Islander Commission (ATSIC).

That system is simply not working and has serious shortcomings that will limit the ability to implement any new agenda.

That is the lesson of successive *Social Justice Reports*⁴ to the federal Parliament, and that is the lesson of the Australian National Audit Office's audit of the whole of government arrangements for delivering services to Indigenous people.

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 – be it in an urban or a rural or remote setting. If you explored the current policy settings, you could be forgiven for mistakably believing that the majority of Indigenous people live in remote, discrete communities given the substantial emphasis on this by government and the lack of detailed effort on equally important tasks such as unlocking mainstream accessibility of programs for Indigenous peoples.

Already the new government has made some bold announcements for reforming Indigenous affairs. It has announced:

- the establishment of a Working Group on Indigenous Reform at the level of the Council of Australian Governments;
- the establishment of a Joint Policy Commission with the involvement of the Opposition to look at solutions for the housing situation faced by Indigenous peoples; and
- explicit commitments to close the gap in life expectancy, maternal and child health, and literacy and numeracy.

These announcements do not deal explicitly with the problems of the federal model for service delivery that I have outlined. If modifying this existing system is not treated as an urgent priority for reform, then it will stymie any constructive efforts to advance Indigenous issues.

⁴ http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf

But before we discuss some specifics of what needs to change, let us consider how we got to where we are today.

Continual stories of failure and despair have left a deep scar across Indigenous communities. They breed hopelessness and despair. And among the broader Australian society they also breed intolerance and anger, usually directed towards Indigenous peoples.

Back when Mick Dodson was Social Justice Commissioner in the early 1990s he referred to what he called the ‘industrial deafness’ of the Australian community. By this he meant the phenomena whereby the Australian community had become so accustomed to stories of Indigenous disadvantage that they had become immune to it, and came to expect it.

Over the past decade, the community and government have come to believe that this situation is intractable, too difficult to shift and for some people, the fault of Indigenous peoples themselves.

And at some point, as a nation we stopped believing that equality of opportunity for Indigenous peoples was a realistic goal. And so we stopped trying to achieve it.

In my view, this lack of aspiration is reflected in the way the previous federal government placed emphasis on the ‘record levels of expenditure’ annually on Indigenous issues.

There are many things that could be said about this approach – the creative accounting involved, and the queries about whether the money ever hit the ground, yet alone benefited Indigenous communities. The general lack of scrutiny of the “record expenditure” by the mainstream media, except the *Sydney Morning Herald*, also beggars belief.

But to me the main issue is, since when did the size of the input become more important than the intended outcomes?

What exactly was the point of the record expenditure?

I can guarantee you that if you keep on the current path, there will be record levels of expenditure every year for the next decade. This is because there is a sharply growing Indigenous population. More people living in poverty and requiring additional services.

As best as I can ascertain it, the point of highlighting the record level of expenditure was a gentle hope that things would improve incrementally over time.

And on some measures they have – albeit slightly. But on others they have not. And very little of it is by design.

So while I firmly believe that these stories of disadvantage and dysfunction should be told, I also believe that they should not be told *just for the sake of it*.

They should be told to hold governments accountable for their actions; to build support and determination among the broader community to create positive change; and to challenge Indigenous people and communities to face the demons in our own backyards.

These stories should be told in order to fuel change, and to kick start action.

But what type of action?

This is the crossroads that we now face.

I want to place before you some quotes. Each is worth reflecting on. In a different way, each relates to the challenges that lie before us.

First, let me quote to you the recently retired Secretary of the Department of Prime Minister and Cabinet, Dr Peter Shergold. Recently he said:

Sometimes when people say it must be tough being head of PM&C, or it must have been tough when you were working in DEWR during the waterfront dispute, I disagree. I always think that if you've done three and a half years trying to administer aboriginal affairs, you can take anything – it is a genuinely difficult area. You know that people's lives depend upon it ... It's a very emotionally fraught area.⁵

In his final interviews as Secretary of PM & C he also expressed his regret at the slow progress on Indigenous issues, describing it as an area that is 'intractable'. In his valedictory lecture he stated:

Often I despair at the abject failure of well-intentioned policies to make a substantive difference to the appalling conditions in which too many indigenous Australians live.⁶

Next, let me quote to you former Minister Mal Brough on introducing the NT intervention legislation to Parliament. He stated:

When confronted with a failed society where basic standards of law and order and behaviour have broken down and where women and children are unsafe, how should we respond? Do we respond with more of what we have done in the past? Or do we radically change direction with an intervention strategy matched to the magnitude of the problem?⁷

Third, let me quote to you from the apology speech by Prime Minister Rudd last Wednesday. He stated:

The truth is: a business as usual approach towards Indigenous Australians is not working. Most old approaches are not working. We need a new beginning.⁸

So what can we take from these quotes?

Well first, for some time there has been a growing despair and a growing sense of urgency for governments to get it right when it comes to Indigenous affairs. This is particularly in relation to dealing with the hardest and most damaging issues in our communities - child abuse and family violence.

Second, this has become a clear clarion call for change – a determination to do things differently. As Mal Brough puts it, 'do we respond with more of what we have done in the past?' And as Prime Minister Rudd puts it: 'a business as usual approach towards Indigenous Australians is not working. We need a new beginning'.

⁵ <http://www.apsc.gov.au/media/briggs080208.htm>

⁶ www.apsc.gov.au/media/shergold080208.htm.

⁷ The Hon Mal Brough, 2nd Reading Speech – Northern Territory Emergency Response Bill 2007, Hansard, 7 August 2007, p10.

⁸ http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm.

When you combine this sense of despair, the growing sense of urgency with a determination to do things differently, you can see how something as radical, as intensive and as divisive as the NT intervention emerges as the basis for new policy approaches.

Regardless of your views on the appropriateness of the approach adopted in the Northern Territory, it has blown out of the water once and for all the *status quo* in Indigenous policy making.

This *status quo* is the fallacy that if governments continue on their existing path, eventually the substantial issues facing our Indigenous communities will be resolved. It is the fallacy that governments have been doing everything within their power and resources to address the gross disparities experienced by Indigenous peoples across all areas of life.

And it is the fallacy that government efforts are sufficiently targeted to achieve their desired outcomes – namely, addressing these life disparities experienced by Indigenous peoples. This fallacy has been perpetuated by successive governments at the federal and the state and territory level. Its most regular manifestation is the usual government trick of seeking to address one area of need by taking resources from another area of the indigenous budget – shuffling resources rather than adding to the quantum available.

Through their actions in introducing the NT intervention, the former government admitted three key things.

First, that governments were not providing Indigenous peoples with basic services that other Australians take for granted – policing and law and order; health and education services; and adequate infrastructure to name but three areas.

Second, it admitted to the fact that the *scale* of investment in our Indigenous communities to date has not been sufficient to enable real change – sustainable, long term gains that can turn communities and peoples lives around.

And third, it admitted that the change needed is not going to be achieved quickly and will require long term investments.

So what do we learn from these admissions? Down what path do they lead us?

It has to be said that these admissions reveal how simplistic it is to draw a line under all past efforts as failed and to strive for newness. In many ways, past approaches didn't work because they never had a chance to work.

Indigenous affairs have been treated as if they are immune from good policy development. Lofty aspirations, repeated often, without a snowball's chance in hell of ever being realised because of the stubborn refusal (or possibly even the convenient blind eye being turned) to the fact that there is a clear lack of capacity to deliver -both in human terms and in terms of the financial inputs.

The NT intervention is, therefore, emblematic of the challenges that we face more broadly in Indigenous policy.

The NT intervention represents the appeal and seductive charm of embracing new approaches and breaking from the past. But it also represents the danger of such change

without looking back over your shoulder and considering where you have been, what has worked, and what has been the source of the problems faced to date.

Ultimately, the commitment of the previous government to make a real difference cannot be questioned. But in the context of tonight's discussion, I think that the previous government got it wrong on two fronts.

First, they didn't seek to learn from their past, and even from their very recent efforts. The NT intervention bears little resemblance to the so-called 'bold experiment' of the post-ATSIC new arrangements – such as the COAG trials, Shared Responsibility Agreements (SRA) and whole of government coordination.

These were largely implemented from 2004, so they were hardly the distant past. There are lessons from these arrangements that will affect the workability of the NT intervention and go to the capacity of government to deliver.

And second, they didn't appreciate the importance of undertaking action in partnership with Indigenous communities. In fact, since the abolition of ATSIC they had moved further and further away from the systemic involvement of Indigenous peoples in policy making processes. In the intervention, this is reflected in processes that are prescriptive and compulsory in nature rather than applied voluntarily and in partnership; or put differently, that treat Indigenous peoples as passive recipients of policy rather than active agents for change; and it is reflected in processes that are enormously, and I would say excessively, costly. And all from a government committed to cutting the 'red tape' of bureaucracy for Indigenous service delivery!

And this leads me to the essential components for reform.

To me, the essential challenges for Indigenous policy reform are as follows.

First, there is a pressing need to ensure the full participation of Indigenous peoples in policy making processes.

This is essential and it is currently lacking.

There is currently a disconnect between policy making at the national level and its implementation at the local and regional level, with a consequence that there are insufficient provisions that enable Indigenous participation in the policy process.

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.

More importantly, if bureaucrats or governments believe that their ideas are more important or more relevant than those of local indigenous peoples, or that they can replicate policies that have worked in different contexts – such as functional or urbanised communities, or communities which have the necessary infrastructure and support mechanisms in place, then again, they will fail.

These are fairly basic points. But they are of such fundamental importance. And so often they are overlooked.

There is also a challenge to build into policy a longer term vision for the well-being of Indigenous communities. Policy development and program implementation can benefit from understanding community development principles. Creating change in communities is a long term process that will ultimately only be achieved by empowering and supporting communities, often small step at a time, so that they are capable of taking control of their circumstances. This takes time and consistency of effort.

This need for participation exists at the local, regional and national levels. Processes are needed to ensure Indigenous input in a systemic manner at the regional level, and linked up to the state and national levels.

With the recent demise of the National Indigenous Council (NIC), the need at the national level is particularly pressing. The NIC was not intended to be a representative organisation, and it did not adopt a consultative approach to its work during its existence.

But now that it is gone there is no systemic structure in place for Indigenous input into government decision making.

Ultimately, there is a need for a new national representative body to ensure such input and engagement.

To this end, my Office has recently commissioned research to assist in the conversation with Indigenous peoples as to the core aspects of such a representative body. Our research will answer the following three questions:

- 1) What lessons can be learnt from mechanisms for representing Aboriginal and Torres Strait Islander peoples at the national level that have previously existed?
- 2) What options are there for ensuring that a national Indigenous representative body is sustainable? and
- 3) What lessons can be learned from mechanisms for representing Indigenous peoples that have been established in other countries?

This information should provide a solid basis for informed debate among Indigenous peoples as to the different aspects of models for representation that is most suitable to meet their needs.

This will take time. And so in the interim, there remains a challenge to ensure Indigenous voices can be heard in the policy arena.

To this end, I have proposed to government that they convene a series of meetings of Indigenous peak bodies. This would include land councils, affiliations of health organisations, Aboriginal child care agencies, educational bodies and other peaks operating at the state, territory or national level.

Most of such organisations are elected by Indigenous peoples and they are representative of their sectors.

Such a process would provide an interim approach to ensure that Indigenous peoples are at the table as vital decisions about their lives are made by the government. Such a voice should not be denied for the year or more that it is estimated that it will take for a representative body to be functional.

Second, ambitious targets should be set.

Indigenous policy should not be allowed to simply drift along without ambition and without targets. It is not good enough to rely on 'record levels of expenditure' as the measure of progress.

It is time to be bold and to be honest. The lack of goals for achievement in Indigenous affairs, with targets and benchmarks to measure progress over time, is actually a failure of accountability and transparent policy.

In his apology speech, the Prime Minister acknowledged this. He stated:

Our challenge for the future is now to... embrace a new partnership between Indigenous and non-Indigenous Australians...

A new beginning which contains real measures of policy success or policy failure. A new beginning, a new partnership, on *Closing the Gap* with sufficient flexibility not to insist on a one-size-fits-all approach for each of the hundreds of remote and regional Indigenous communities across the country but instead allows flexible, tailored, local approaches to achieve commonly-agreed national objectives that lie at the core of our proposed new partnership. And a new beginning that draws intelligently on the experiences of new policy settings across the nation.⁹

For two years now, I have been leading a coalition of organisations in an effort to embed targets and benchmarks into Indigenous health policy in order to meet the goal of achieving Aboriginal and Torres Strait Islander health equality within a generation.

This has become known by many as the '*Close the Gap*' campaign,¹⁰ and it uses a human rights based approach to health programming to cut through the malaise that currently exists in Indigenous health policy. In terms of human rights implementation, it is cutting edge stuff.

It is most heartening that the new government has begun to take up the challenges that we have put forth through the close the gap campaign. In his apology speech, Prime Minister Rudd accepted the need for targets and goals when he said:

unless we as a parliament set a destination for the nation, we have no clear point to guide our policy, our programs or our purpose; no centralised organising principle...

⁹ http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm.

¹⁰ <http://www.closesthegap.com.au/>

None of this will be easy. Most of it will be hard—very hard. But none of it, none of it, is impossible, and all of it is achievable with clear goals, clear thinking, and by placing an absolute premium on respect, cooperation and mutual responsibility as the guiding principles of this new partnership on *Closing the Gap*.¹¹

This is a critical element for policy reform at the federal level.

Third, and related to this, such targets and goals should receive bipartisan support and form the basis of inter-governmental cooperation.

We need long term commitments to make real progress in Indigenous affairs.

This requires stability and determined action. And it requires longer term funding, especially for community initiatives so that they no longer are beset from the perennial problems of pilot funding or short term funding arrangements.

Bipartisan support is essential to support this. Achieving improvements in Indigenous disadvantage should sit above party politics.

The recently established Joint Commission on Indigenous Policy provides the vehicle for this to occur. In my view, this could be enhanced by ensuring that this Commission is supported by the input of the best and brightest from across society – with business leaders, academics, community workers and others invited to contribute to its work – to ensure that its work is evidence based and informed.

These targets and commitments should also be applied across governments. The newly announced COAG Working Group on Indigenous Reform provides the platform for this to occur.

Ultimately, it should lead to consolidated agreements between the states and Commonwealth for Indigenous affairs, be built into funding agreements for housing, health, education and other services, with compliance and accountability mechanisms affecting the distribution of Special and General Purpose Payments by the Commonwealth.

Much can be achieved if the federal government ensures that the targets agreed are matched with teeth for accountability and implementation.

Fourth, once goals and targets have been set, government processes must be reformed and re-engineered to ensure that they are capable of meeting these challenges.

Target setting is not a rhetorical exercise. Once a target is set in good faith, it requires a realistic assessment of the inputs and approaches necessary to achieve it, and then action to match resources to the level of need.

There has rarely been a time when Indigenous services have been funded to the level of need. This is a primary reason relating to the failure to achieve substantial improvements over the past decade.

¹¹ http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm

Recently, the Australian National Audit Office (ANAO) assessed the whole of government arrangements for Indigenous affairs. It found a fundamental problem in how government programs for service delivery matched with the government's ambitions. These ambitions were reflected in three priority areas for action as agreed through COAG, and as reflected in the Overcoming Indigenous Disadvantage reporting framework.

The ANAO noted that whole of government delivery of services requires departments to work together to develop budgeting and reporting arrangements that meet both the accountability obligations of individual departments and also contribute to the collective achievement of, and accountability for, whole of government outcomes.

They concluded that none of the agencies audited identified their contributions to meeting the priorities as set by COAG and their Ministers, and none of them had developed whole of government measures of accountability. Few even identified within their internal systems what the key priorities for action were. So:

While departments individually identify their activities in Indigenous affairs in their accountability documentation, there is little in the way of performance information at the aggregate level to assess and inform progress in terms of the... identified priority areas for action in whole of government Indigenous service delivery.¹²

In many ways, this is symptomatic of the lack of a targeted plan of action by the federal government to date. And it is symptomatic of a troubled system for whole of government service delivery.

Through successive *Social Justice Reports* I have provided a running commentary on the potential benefits and the concerns about this whole of government system. Contrary to many, I still see much potential in this system. Particularly, I see potential in community brokers and local level agreement making processes, coordinated on a regional level through the Indigenous Coordination Centres.

But the system as it stands is not working. This is in part due to the absence of any systemic approach to engagement with Indigenous peoples, but it has also been the result of the tight control at the central level of activities that occur regionally.

There needs to be a continued focus on local level agreement making to build the capacity of Indigenous communities, as well as that of the government. A community partnership or community development model is not too big a leap from the existing structure and should be explored further.

And fifth, Indigenous policy making should be based on a commitment to human rights

Fundamental to good policy development is that all legislation, policies and programs developed and implemented by governments should be consistent with international human rights standards.

¹² See further: http://www.anao.gov.au/director/publications/auditreports/2007-2008.cfm?item_id=A0CE05401560A6E8AA45071FCB8C974B.

At present, domestic Indigenous policy making processes treat human rights as a prescriptive framework that is focused on *what you can't do* and on a *compliance mentality*. The limited efforts to engage with human rights principles are at the most crude and basic level, such as crafting measures so that they can avoid accusations of racial discriminatory treatment.

Clearly this is an essential component of the human rights system. But it is much more than this. It also encourages the adoption of proactive measures to create an enabling framework for active participation and engagement of all citizens, and particularly for those who are disadvantaged or powerless.

The human rights framework promotes a focus on ensuring that different segments of the population are able to participate fully. This requires a focus on gender equality; the rights of children and a focus on the best interests of the child; as well as providing recognition and protection for cultural diversity.

Human rights provide an enabling framework that promotes active engagement of Indigenous peoples through partnerships, shared decision making and ultimately shared responsibility for outcomes.

Importantly, human rights also provide a framework to assist in targeting government activity to areas of greatest need. One of the fundamental goals of human rights is the provision of equality before the law and non-discriminatory treatment for all. Where such discrimination exists, such as the entrenched discrimination against Indigenous peoples that is reflected in disproportionately high rates of disadvantage, there are obligations on the national government to ensure that actions by government to address these inequalities are sufficiently targeted, are progressively reducing the inequality gap and are doing so as quickly as possible and utilising the maximum of available resources.

If I return briefly to the NT intervention, it reveals the dangers of not adopting a human rights based approach.

Measures that violate the human rights of the intended beneficiaries are more likely to work in ways that undermine the overall well-being of these communities in both the short and longer term.

For example, the Government has clearly stated that the NT intervention seeks to address a breakdown in law and order in Aboriginal communities. And yet it potentially involves introducing measures that undermine the rule of law and that do not guarantee Aboriginal citizens equal treatment to other Australians.

If this is the case, then it places a fundamental contradiction at the heart of the NT intervention measures. This will inhibit the building of relationships, partnerships and trust between the Government and Indigenous communities. It would also undermine the credibility of the measures, and ultimately, threaten the sustainability and long term impact of the measures.

Human rights obligations are not merely technical matters that sit distant from the day to day realities of life for Indigenous children and their families. The ability of children, their families and their communities to enjoy their human rights has a profound impact on the environment in which they live, grow and develop.

It fundamentally impacts upon their hopes and aspirations, in empowering or disempowering them, and in supporting or restricting different life paths and ultimately the choices that people make about their futures.

Put simply, all measures to address family violence and child abuse should themselves respect human rights. It would be outrageous to suggest that it is not possible to achieve this.

So to conclude, the new government may not yet have fully realised it, but they have been left with a system for delivering on the government's commitments to Indigenous affairs and reconciliation that is severely limited in its capacity; that has developed and mutated out of an urgent desire to do better, but which has ignored the evidence in adopting change; and which has become disconnected from the very people it is meant to service.

This creates serious challenges for the government. Reform is necessary to ensure appropriate standards of accountability are upheld; that a clear, consistent vision is applied; and that the capacity exists to deliver.

Unless this is addressed within a learning framework, with an eye to detail and basic standards of good policy practice being applied, the government may find that it becomes frustrated at the lack of achievement and the intractable nature of the existing disparities in life circumstances experienced by many Indigenous peoples.

The first step on this road is mutual respect and a partnership.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.

4. Essentials for Social Justice: Protecting Indigenous children

31 March 2008
Sydney

Launch of the Social Justice Report 2007 and Native Title Report 2007

I begin by paying my respects to the Gadigal peoples of the Eora nation, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you, Alan Madden, for your generous welcome to country for all of us.

Thank you to everyone for attending the launch of the latest *Social Justice Report 2007*¹³ and *Native Title Report 2007*.¹⁴ These reports were tabled in federal Parliament on the 20th March 2008. The video you have just seen has outlined the contents of the two reports.

This speech focuses on the findings of the *Social Justice Report*. The panel debate that follows will focus on the findings of the *Native Title Report*.

This speech is also part of a series of seven that I will be delivering nationally over the coming months outlining an agenda for change across all areas of Indigenous affairs. I have termed this series of speeches: *Essentials for Social Justice*.

Today's speech is titled: '*Protecting Indigenous children*'.

No one wants to see children abused, families destroyed, and the aspirations for a bright future dulled because hope has been overwhelmed by despair.

Aboriginal children – wherever they live in Australia – deserve a future in which they have the same opportunity as other children to thrive, develop and enjoy life.

They are entitled to such a future for no other reason than that they are human, born with dignity and in full equality to all other Australians.

Such equality involves being able to live and grow in safety, without fear of violence or intimidation, within a thriving, caring and loving family unit, and according to your culture.

It also involves living in an environment where individuals are able to exercise control over their own lives. Where they are able to make decisions. Are responsible for those decisions and their impact on their family and the community in which they live.

And where their choices are meaningfully backed up by the means to achieve them. This requires access to basic services and the provision of education in order to build dreams and hope, as well as create the personal capacity to achieve these.

¹³ http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf

¹⁴ http://www.hreoc.gov.au/Social_Justice/nt_report/ntreport07/pdf/ntr2007.pdf

For many Indigenous children across Australia, such equality is a pipedream.

For some, overwhelmed by environments of dysfunction, it is not even dreamed of.

It is a tragic fact that an Aboriginal or Torres Strait Islander child born today does not have the same life chances as other Australian children.

All Australian governments should be committed to ensuring an equal start in life for Indigenous children.

Without this, the most vulnerable members of our society are left in a position where they must overcome extreme obstacles and differing forms of adversity merely to access what all other Australians take for granted.

This is something that should not exist in 21st century Australia. Addressing it is the defining challenge for our nation.

And it is with this challenge in mind that I present to you the *Social Justice Report*.

This year's report considers the most heart-wrenching and difficult issue that can be faced by any community - family violence and child abuse in Indigenous communities.

The *Social Justice Report* approaches this issue from four different perspectives:

- First, it provides an overview of the statistics and the evidence about the extent and patterns of violence and abuse in Indigenous communities. It includes detailed information about the findings of inquiries into violence and abuse. And it identifies a continuum of services and responses that are necessary to address *all* of the factors that ultimately contribute to such high rates of violence and abuse in our communities.
- Second, it considers efforts by Indigenous communities themselves to combat violence and abuse. It seeks to celebrate the successes that exist in our communities – for they do exist. And it identifies the significant challenges that communities face in keeping programs going. It also identifies some of the lessons that we can learn from our own people about successfully tackling violence and abuse. The report does this through 19 case studies covering programs nationally.
- Third, it provides an overview of current and recent efforts by all Australian governments to address violence and abuse. You will find in the report a very comprehensive overview of programs and policies as they exist in every state and territory, at the federal level and also COAG on Indigenous family violence.
- Finally, the report provides a detailed analysis of the Northern Territory intervention.

Barely a day goes by without another chilling and heartbreaking story of abuse, violence or neglect; or of new ideas, often borne out of frustration, for addressing this.

Ultimately, the sustained scrutiny and national level debate on issues of violence and abuse creates a momentum for change and for action.

Clearly we need such change.

What the report does, is to place this need for change into context to ensure that this change is considered, evidence based, capable of being achieved and systemic.

I have a major concern about Indigenous policy at the moment that it is developing in an ad-hoc manner – where significant new changes are made at short notice, with limited Indigenous involvement and in response to crisis situations.

We risk losing sight of our overall objective when policy develops in this way. If we are genuinely committed to protecting our children then we must ensure that the actions that we take are sound, into the longer term.

Short term expedience and undeliverable promises have no place in Indigenous policy generally – but specifically have no place where the safety and protection of children is involved.

As I will explain shortly, such expedience includes overriding human rights protections for Indigenous peoples. This is not some technical matter – it goes to the core of the effectiveness of the processes that are being introduced.

What we have seen in recent years is a growing despair and growing sense of urgency for governments to deal with issues related to child abuse and family violence in Indigenous communities.

When you combine this sense of despair, the growing sense of urgency with a determination to do things differently, you can see how something as radical, as intensive and as divisive as the NT intervention emerges as the basis for new policy approaches.

Regardless of your views on the appropriateness of the approach adopted in the Northern Territory – and I have a lot to say about that in a moment – the intervention has blown out of the water once and for all the *status quo* in Indigenous policy making.

This status quo is the fallacy that if governments continue on their existing path, eventually the substantial issues facing our Indigenous communities will be resolved. That the violence will be addressed. That the entrenched poverty will be addressed, and so on.

It is the fallacy that governments have to date been doing everything within their power and resources to address this. And it is the fallacy that government efforts are sufficiently targeted to achieve their desired outcomes.

This fallacy has been perpetuated by successive governments at the federal and the state and territory level.

Through their actions in introducing the NT intervention, the former federal government has admitted to three key things that should forever change Indigenous affairs.

- First, that governments were not providing Indigenous peoples with basic services that other Australians take for granted. Services such as policing and law and order; health and education services; and adequate infrastructure to name but three areas.
- Second, it admitted to the fact that the scale of investment in our Indigenous communities to date has not been sufficient to enable real change – sustainable, long term gains that can turn communities and peoples lives around.

- And third, it admitted that the change needed is not going to be achieved quickly and will require long term investments.

These admissions in turn reveal how simplistic it is to draw a line under all past efforts as failed and to strive for newness. They clearly demonstrate that past approaches didn't work because they never had the chance to work.

The NT intervention is, therefore, emblematic of the challenges that we face more broadly in Indigenous policy.

We know that similar problems such as lack of adequate service delivery by governments – all governments; abject poverty; lack of schooling; and high rates of violence, exist in communities outside of the Northern Territory and particularly in our regional centres and urban environments.

How should we respond to this? Ignore it until we hear revelations in the national media about a certain community or region? Then cobble together some quick response for that area? Such an approach is too ad hoc.

The NT intervention represents the appeal and seductive charm of embracing new approaches and breaking from the past. But it also represents the danger of such change without looking back over your shoulder and considering where you have been, what has worked, and what has been the source of the problems faced to date.

And it also represents the danger of unilateral action – without recognising the importance of undertaking action in partnership with Indigenous communities. In the intervention, this is reflected in processes that treat Indigenous peoples as passive recipients of policy rather than active agents for change.

I am a firm believer that many of the answers to Indigenous problems can be found in Indigenous communities. This is why it is so crucial to learn from successes, as well as challenges, rather than reinventing the wheel every time a new policy or program is announced.

Tomorrow's national strategy should come out of today's success stories as we consolidate knowledge and experience.

That is a major reason why this year's *Social Justice Report* seeks to highlight success stories and to show how Indigenous peoples are taking control of these issues in many communities.

This offers hope as well as valuable evidence and learning to inform better service delivery in the future. It is intended to also restore some confidence and dignity to Indigenous Australians who have suffered from the wholesale negative portrayal of Indigenous society by some politicians and media.

Accordingly, the 19 case studies in the report aim to encourage individuals in communities by showing what can be achieved; to inspire service providers to think critically about how effectively they are delivering these services; and to challenge governments to be responsive and flexible to innovative programs and responses to family violence and abuse.

I would urge you all to take some time to read about some of the initiatives included in the report. They cover a vast range of different approaches ranging from community education and development initiatives, to healing services, alcohol management, safe houses, family violence perpetrator programs, to initiatives aimed at building the self-esteem of men and creating support structures for men, through to innovative processes for the interface with the care and protection system and supporting women in raising their children.

I would urge you to read about:

- Shane, whose life has turned around since he began attending the Yerli Birko men's group in Adelaide; or
- Dave, and his experiences in the Spirited Men program at Murray Bridge; or
- Liz, a young woman with kids who was considered in the high risk category by child protection but who has been able to be supported by the *Strong Young Mums* program in Bourke;
- As well as the other personal stories contained in the report.

When you read the report, you will see that I identify a range of success factors and lessons from each case study. Some of the most significant include that these programs are:

- **First, community generated:** The most successful programs are those that are developed by the community, and that respond to individual community needs.
- **Second, created with genuine community engagement:** This engagement involves more than just consultation. Communities need to have real power to make decisions and have input into the program development and implementation. This can take time and requires flexibility and patience but ultimately reaps long term rewards.
- **Third, recognises the need for community development:** Community development and capacity building often needs to take place before communities are able to take ownership of family violence initiatives.
- **Fourth, be built on partnership:** All of the successful case studies were built on partnerships, be it with government departments or other agencies.
- **Fifth, adopt a holistic approach:** The underlying, situational and precipitating factors of violence and abuse all need to be tackled, often simultaneously. So while a person participating in a healing program, might present with issues around alcohol or drug use, a whole range of practical, cultural, psychological and emotional needs might need to be dealt with as well.

There are many other lessons included in the report. In brief, these include:

- recognising the importance of tailoring projects so they are culturally appropriate;
- ensuring a strong connection to culture and respect for traditional law to reinforce anti-violence messages and build positive community identity;
- recognising the importance of family and utilising extended family ties in developing solutions, including for child safety;

- Involving men in the solutions to family violence while at the same time empowering women;
- Building on existing community strengths; and
- Recognising the important role of Indigenous staffing in building legitimacy with the community and in challenging violent behaviour.

The case studies also strongly show that community education, particularly around human rights, needs to be part of a strategic approach to addressing family violence and abuse in order to assist communities to grow and develop capacity, ultimately creating safer environments for women and children.

Although none of these lessons are necessarily new, taken together they provide a framework for developing good family violence interventions.

And that leads me back to the NT intervention.

If we consider the measures introduced in the NT, there is a disturbing lack of connection between the actions under the intervention and these success factors that I have just discussed.

Now I note the intention that the intervention proceed in several stages – from an emergency intervention to ‘stabilise’ communities, through to a longer term development process. Some of the critical steps in this include the conduct of surveys of need in communities that are under the intervention; along with the child health checks process.

So there remains potential for some of the early actions already undertaken as part of the intervention to form the basis for modifying the intervention’s approach so that it may take these lessons into account over time.

Ultimately, the analysis in the *Social Justice Report* on the intervention focuses on whether the legislative basis for the intervention is consistent with Australia’s human rights obligations.

I argue that measures that violate the human rights of the intended beneficiaries are more likely to work in ways that undermine the overall well-being of the communities in which they live in both the short and the longer term.

For example, the Government has clearly stated that the NT intervention seeks to address a breakdown in law and order in Aboriginal communities. And yet it potentially involves introducing measures that undermine the rule of law and that do not guarantee Aboriginal citizens equal treatment to other Australians.

If this is the case, then it places a fundamental contradiction at the heart of the NT intervention measures. This will inhibit the building of relationships, partnerships and trust between the Government and Indigenous communities. It would also undermine the credibility of the measures, and ultimately, threaten the sustainability and long term impact of the measures.

This is the type of ‘short term expedience’ that I spoke of earlier.

My starting point for determining the human rights implications of the NT intervention measures is to recognise that they are intended to address family violence and child abuse in Indigenous communities.

It is essential that governments undertake action to address violence and abuse, particularly when there is compelling evidence that it is widespread. Governments that fail to act in these circumstances would be in breach of their human rights obligations.

But ultimately, the report has raised significant concerns about the consistency of the legislation underpinning the NT intervention with Australia's human rights obligations.

Human rights law is clear that any measures must be non-discriminatory in their application and impact. This obligation is non-negotiable and unable to be deviated from.

Put simply, all measures to address family violence and child abuse should themselves respect human rights. It would be outrageous to suggest that it is not possible to achieve this.

The main concerns identified about the NT intervention legislation from a human rights perspective are as follows:

- **First, the NT legislation is inappropriately classified as a special measure.** It is not possible to support the government's contention that all of the measures contained in the NT intervention legislation can be justified as special measures. It is therefore also not possible to say that in its current form the legislation is consistent with the RDA.

There are two concerns in this regard. When seeking to classify 'restrictive' measures as beneficial to a community, you need to demonstrate that consultation has occurred and community consent has been sought for such measures. There is then a second requirement that measures must be appropriate and adapted to the end of child protection. The scope of income management provisions – such as quarantining of 100% of welfare in some circumstances and its application to everyone regardless of circumstance – may also not be an appropriate and adapted response. This limits the ability of these measures to be legitimately characterised as special measures under the RDA.

- **Second, the NT intervention legislation contains a number of provisions that are racially discriminatory.** There are also a number of provisions in the legislation that deny Aboriginal people in the Northern Territory democratic safeguards and human rights protections that exist for all other Territorians and Australians.

Examples include the lack of merits review of decision making; removal of access to schemes for just terms compensation; exemptions from the application of all laws that deal with discrimination at the federal and territory level; and the removal of requirements to obtain consent for the management or control of Indigenous property.

These provisions deny Aboriginal people in the NT procedural fairness and access to justice.

- **Third, the NT intervention removes protections against discrimination that occurs in the implementation of the intervention measures.** Immunity is provided for any act of discrimination that occurs under the provisions of the legislation. This includes in decisions made by bureaucrats or other agents – such as store owners – in communities. This provides an extraordinarily broad exemption from the protection of discrimination.

The report additionally identifies a range of specific concerns about the consistency of the income management regime with the rights to social security, privacy and non-discrimination; and the alcohol management regime with the right of non-discrimination.

It also expresses concerns about the absence of effective participation of Indigenous peoples in decision making that affects them.

What I want to see is change to the current model for the intervention so that it is consistent with human rights, and draws on the strengths of communities so they are part of the solution and not just treated as if they are the problem.

And so, the report sets out a **ten point plan** for modifying the NT intervention.

The simple objective of this action plan is to remove the discrimination from the legislation and in its operation.

The first five points of this action plan are on the screen before you. They identify changes to the current framework for the intervention to ensure that the legislation is applied fairly with the ordinary protections that apply for all other Australians.

For these measures, I challenge **anyone** to explain how providing these basic democratic protections could possibly hinder the goal of protecting children. The only possible answer is 'short term expedience' prevailing over guarantees of access to justice. And that is not a good enough answer.

Actions 6 and 7 then seek to address the arbitrariness of the existing regimes for income management and alcohol restrictions provided for under the intervention legislation. The report states that some form of quarantining and some form of alcohol restrictions can be justified consistently with human rights. The sweeping and discriminatory approach adopted through the legislation, however, is not that approach. The report recommends that the government seek to implement voluntary community based schemes in place of the blanket bans currently provided for.

I expect that there will be a number of circumstances where excellent alternative processes can emerge that are more effective and owned by the communities involved.

As an example, the report notes that there were alcohol management plans in place prior to the intervention in all but one of the communities under the legislation. The case study of the Umbakumba community shows how they voluntarily had developed a highly successful alcohol management system.

Action points 8 - 10 then look to how the intervention can transition back to a process that is a partnership with Indigenous communities and where the ambitions are shared rather than imposed.

What I am challenging the government to do through this action plan is to set a timetable for transitioning the emergency intervention from its stabilisation phase to a community development phase.

I propose that this occur through a new mechanism - Community Partnership Agreements.

By utilising the existing community survey information that is supposed to have been completed in each community, as well as building on the lessons through the Indigenous Coordination Centre networks across the Territory, I expect that the government now has a clear view of what needs to occur in each community.

If it doesn't then it has failed to do what it said it would do when the intervention was introduced.

A Community Partnership Agreement provides a way of formalising a relationship and agreed vision between a community and the government of Australia and the NT as to what will happen in that community.

It will create hope and ambition that the specific needs of the community will be addressed.

And to be frank, there is strong incentive for communities to come on board with such an approach. Such an agreement would provide the basis for the introduction of community based and supported mechanisms to deal with the issues of child protection, family violence, alcohol, and related community development needs. Responsibility would be truly shared, rather than imposed.

Having developed this community plan, the Minister for Indigenous Affairs could then declare at some later point— using her powers under the Acts – that more appropriate arrangements are in place in a particular community and therefore there is no longer a need for that community to be subject to the generic arrangements set out in the intervention legislation.

The approach I am recommending here sets out a major challenge to government and to communities. It is also, however, a case of challenging the government to deliver what it has promised to do through the intervention. And it would enable the government to do this in a manner that respects human rights and human dignity.

A final comment on this action plan: it strongly endorses the call for an independent review at 12 months of the intervention.

An independent review should take place to ensure that the goals of the legislation are being achieved in a manner that is consistent with human rights, and allow for any negative consequences to be identified and addressed as soon as possible.

Fundamental to the success of such a review will be the involvement and input of Aboriginal people from the communities involved. Ongoing participation from individuals on the ground will not only ensure the legitimacy of the measures undertaken, it will also help to contribute to their ongoing success as the needs and aspirations of communities change over time.

Finally, less than a fortnight ago I co-convened the National Indigenous Health Equality Summit in Canberra. In a historic event on Thursday 20 March, the Australian Government entered into a new partnership with the indigenous health sector to close the gap on Indigenous life expectancy.

I want to close by recalling some of the commitments that the Prime Minister and Minister for Indigenous Affairs signed in the historic *Statement of Intent*¹⁵ on *Closing the Gap*.

The *Statement of Intent* commits:

- To developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non- Indigenous Australians by 2030.
- To ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.
- To building on the evidence base and supporting what works...
- To respect and promote the rights of Aboriginal and Torres Strait Islander peoples... and
- To measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

These ambitions should equally apply in making the NT intervention a joint effort to maximise the benefits of this unprecedented opportunity and to ensure that our children are indeed safe and protected.

The *Social Justice Report* provides a pathway to achieving this on a basis of mutual respect, partnership and good faith. I commend it to you.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.

¹⁵ http://www.humanrights.gov.au/social_justice/health/statement_intent.pdf

5. Essentials for Social Justice: Close the Gap

11 June 2008
Brisbane

Collaborative Indigenous Policy Development Conference

Good morning.

The Hon. Warren Snowden MP, distinguished guests and friends from across Australia.

I begin by paying my respects to the Jagera and Turrubual peoples, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you Maruchi for your generous welcome to country for all of us.

This speech is the fourth in a series of six that I will be delivering nationally outlining an agenda for change across all areas of Indigenous affairs. I have termed this series of speeches *Essentials for Social Justice*.

The first speech in this series was titled 'Sorry' and outlined an agenda for addressing the needs of the stolen generations and the delivery of a national apology. The second – 'Reform' - focused on the need for structural reform within government so that government is capable of meeting its commitments and ambitions. The third – 'Protecting Indigenous children' – focused on addressing family violence and child abuse and the NT intervention.

Today's speech is titled 'Close the Gap' - a title that is a lot more popular now than it was when I started using it a couple of years ago.

Remaining speeches in the *Essentials for Social Justice* series in the coming months will address the importance of land and culture in creating economic development; and a look back at the progress of the Rudd government over its first 8 months in office.

But today – 'Close the Gap'. So, what then is the gap being referred to? Why does it need closing? What does it have to do with "Collaborative Indigenous Policy Development? And what lessons can the Close the Gap campaign offer Indigenous affairs more generally?

The gap is the big one between the health status and life expectation of Indigenous and non-Indigenous Australians.

It is well known for example that there is an estimated difference of approximately 17 years between Indigenous and non-Indigenous life expectation. To look at this another way, that means that 75% of Indigenous males and 65% of females will die before the age of 65 years compared to 26% of males and 16% of females in the non-Indigenous population. For all age groups below 65 years, the age-specific death rates for Indigenous peoples were at least twice those experienced by the non-Indigenous population.

In fact, there are a number of disturbing indicators and trends that reveal an entrenched health crisis in the Indigenous population that need addressing if this gap is to close:

- High rates of chronic diseases such as renal failure, cardio-vascular diseases and diabetes. In 1999–2003, two of the three leading causes of death for Indigenous people in Queensland, South Australia, Western Australia and the Northern Territory were chronic diseases of the circulatory system and cancer.
- High rates of poor health among Indigenous infants do not bode well for the future adult population. In 2000-02, babies with an Indigenous mother were twice as likely to be low birth weight babies (those weighing less than 2,500 grams at birth) as babies with a non-Indigenous mother.
- High rates of unhealthy and risky behaviour, including an increased prevalence of substance abuse and alcohol and tobacco use in the Indigenous population.

With a significant proportion of Indigenous peoples in younger age groups, there is an additional challenge to programs and services being able to keep up with the future demands of a burgeoning population. Unless substantial steps are taken now, there is a very real prospect that the health status of Indigenous peoples could worsen and the gap get bigger still.

So that is the 'gap' I am referring to: a health status gap that divides the life experience of black and white Australians. I will not be the first to observe that the situation is something like having two nations in one: on one hand the non-Indigenous population enjoying some of the best health in the world, and - at the other end - the Indigenous population being forced to settle for something far less.

And behind this gap, there are other divides. Most importantly a divide between the opportunities to be healthy presented to black and white Australians. And I think this is a vital point to realise - particularly for those who would blame Indigenous peoples for their own poorer health. For while it is true that we are all ultimately responsible for the choices we make that affect our health, it is equally true that for a variety of reasons Indigenous Australians have fewer choices to make for health than other Australians.

For example, given that Indigenous peoples' poorer health status would indicate a greater need for primary health care services, it is disturbing that in 2004 it was estimated that Indigenous peoples enjoyed 40% of the per capita access of the non-Indigenous population to primary health care provided by mainstream general practitioners. In other words, many Indigenous peoples cannot make the same kind of choices to see a doctor when they are ill, be checked up, or take advice from doctors about healthy living. And there are many reasons for this. Because a higher proportion of the Indigenous population live in rural and remote areas, the doctor shortage in the bush is having a greater impact on Indigenous peoples when compared to the non-Indigenous population, for example.

But even in the urban centres, where the majority of Indigenous Australians live, they choose against using mainstream primary health care even where it is otherwise available and physically accessible. This can be for many reasons including a lack of cultural 'fit', language barriers, or the perception that mainstream services are not welcoming to Indigenous peoples. Australian governments have long accepted the importance of maintaining distinct health services in urban centres for Indigenous people as a consequence of this.

Per capita Medicare under spend estimates have been used to assess the quantum of the Indigenous primary health care shortfall. Estimates of the shortfall range from \$250 million per annum to \$570 million per annum depending on the quality of service offered. So in an

era of record ten and twenty billion dollar budget surpluses, we are not talking big sums to close this particular divide.

Another area where there is a divide is in relation to health infrastructure, a term used here to describe all the things that support good health, but that are not health services. Examples include: potable water supplies, healthy food, healthy housing, sewerage and sanitation, and so on.

The dominant feature of health infrastructure inequality in Australia relates to Indigenous peoples' housing. Nationally, 5.5% of Indigenous households live in overcrowded conditions. The proportion of overcrowded households was highest for those renting from Indigenous or community organisations (25.7%). Among the jurisdictions, the proportion of overcrowded households was highest in the Northern Territory (23.7%)

In relation to health infrastructure, a century of neglect of health infrastructure in Indigenous communities has left what could be a \$3-4 billion project for this generation, but again - in the scheme of things -- these sums should not discourage us, particularly if one thinks of a ten year program, for example, over which the overall cost would be spread.

And, of course, a wide range of social factors (such as income, education and so on) also determine good or bad health in a population group. Research has demonstrated associations between an individual's social and economic status and their health. In short, poverty is clearly associated with poor health. And as is well known, Indigenous peoples in Australia experience socio-economic disadvantage on all major indicators.

And there are other divides too. While poverty is an example of a social determinant that will impact on both Indigenous and non-Indigenous Australians, there are some social determinants evident in Australia that will only impact on Indigenous peoples.

The unfinished business of colonisation and ongoing second class status afforded Indigenous peoples in Australian society is an example. This includes the stalled efforts to reconciliation (hopefully reignited by the recently offered National Apology to the Stolen Generations), and the ongoing uncertainty surrounding the issues of land, control of resources, cultural security, the rights of self-determination and sovereignty.

Racism too is likely to affect the social and emotional (as well as mental and physical) health of Indigenous Australians in a way not experienced by most other Australians.

So the gap I am referring too, the gap in the health status and life expectation enjoyed by non-Indigenous and Indigenous Australians, can be conceived of as a *manifestation of* other divides that exist in areas like health services provision, health infrastructure and broader social and economic factors that narrow the choices for health that Indigenous Australians can make. And all these must be addressed if the health status and life expectation gap between black and white Australia is to close.

In my *2005 Social Justice Report*,¹⁶ I argued that it was unacceptable for a country as rich as ours, and one based on the notion of the 'fair go' and the 'level playing field', to tolerate the gap, or the divides that underlie it.

The 2005 report set forth a human rights based approach to achieving Aboriginal and Torres Strait Islander health equality within a generation.

It made three recommendations to this end.

The first recommendation was that the governments of Australia commit to achieving equality of health status and life expectation between Aboriginal and Torres Strait Islander and non-Indigenous people within 25 years.

The second recommendation set out a process for what would need to occur for this commitment to be met. It called for:

- The governments of Australia to commit to achieving equality of access to primary health care and health infrastructure within 10 years for Aboriginal and Torres Strait Islander peoples;
- The establishment of benchmarks and targets for achieving equality of health status and life expectation - negotiated with the full participation of Aboriginal and Torres Strait Islander peoples, and committed to by all Australian governments;
- Resources to be made available for Aboriginal and Torres Strait Islander health, through mainstream and Indigenous specific services, so that funding matches need in communities and is adequate to achieve the benchmarks, targets and goals set out above; and
- A whole of government approach to be adopted to Indigenous health, including by building the goals and aims of the National Strategic Framework for Aboriginal and Torres Strait Islander Health into the operation of Indigenous Coordination Centres regionally across Australia.

The final recommendation then recommended that the Australian Health Minister's Conference agree to a National Commitment to achieve Aboriginal and Torres Strait Islander Health Equality and that bi-partisan support for this commitment be sought in federal Parliament and in all state and territory parliaments.

That was two years ago.

Since the release of the Report I have been working with a growing coalition of organisations who have committed to working in partnership to see these recommendations implemented.

It encompasses every major Indigenous and non-Indigenous peak health body in the country, as well as reconciliation groups, human rights organisations and NGOs. It is an extraordinarily committed group of organisations and individuals, across a vast array of different sectors of the community.

¹⁶ http://www.hreoc.gov.au/social_Justice/sj_report/sjreport05/pdf/SocialJustice2005.pdf

The campaign progressed over the past 2 years without any financial support from Australian governments - it has been self-funded.

Overall, the campaign has been led by a leadership group comprising the National Aboriginal Community Controlled Health Organisation, the Australian Indigenous Doctors' Association, the Congress of Aboriginal and Torres Strait Islander Nurses, the Indigenous Dentists' Association of Australia, Oxfam Australia and HREOC.

'*Close the Gap*' was the public title for the Campaign.

One of our primary aims at the time was to obtain the commitment of all Australian governments – through COAG – and of the Australian government in particular due to its significant responsibilities for primary health care - to commit to *Closing the Gap* on Indigenous life expectancy within a generation. And it was to obtain this commitment on a basis of partnership and shared ambition with a wide range of sectors of the community.

As you will be aware, the Councils of Australian Governments did exactly that on 20 December 2007.

In their Communiqué they state:

COAG agreed the 17 year gap in life expectancy between Indigenous and non-Indigenous Australians must be closed.

COAG today agreed to a partnership between all levels of government to work with Indigenous communities to achieve the target of *Closing the Gap* on Indigenous disadvantage.

COAG committed to:

- Closing the life expectancy gap within a generation;
- Halving the mortality gap for children under five within a decade; and
- Halving the gap in reading, writing and numeracy within a decade.

The first stage of the *Close the Gap* Campaign culminated in the *National Indigenous Health Equality Summit* held in Canberra over 18 – 20 March, 2008. There were two streams of activity that took place at the Summit:

- First, a series of Indigenous Health Equality Targets were extensively work-shopped to provide the means by which commitments to close the gap can be met.
- Second, the Commonwealth government and the Opposition were invited to formally re-commit to achieving Indigenous health equality within a generation.

On 20 March 2008 the Summit concluded in the Great Hall of Parliament House with a formal ceremony at which a *Statement of Intent* was signed by the Prime Minister, the Ministers for Health and Indigenous Affairs, the Opposition leader, and every major Indigenous and non-Indigenous health peak body across Australia.

This Statement of Intent commits each of these bodies to a new partnership to close the gap. It states:

We share a determination to close the fundamental divide between the health outcomes and life expectancy of the Aboriginal and Torres Strait Islander peoples of Australia and non-Indigenous Australians.

We are committed to ensuring that Aboriginal and Torres Strait Islander peoples have equal life chances to all other Australians.

We are committed to working towards ensuring Aboriginal and Torres Strait Islander peoples have access to health services that are equal in standard to those enjoyed by other Australians, and enjoy living conditions that support their social, emotional and cultural well-being.

We recognise that specific measures are needed to improve Aboriginal and Torres Strait Islander peoples' access to health services.

Crucial to ensuring equal access to health services is ensuring that Aboriginal and Torres Strait Islander peoples are actively involved in the design, delivery, and control of these services.

And accordingly, the signatories have agreed to the following commitments. I quote:

- To developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non- Indigenous Australians by 2030.
- To ensuring primary health care services and health infrastructure for Aboriginal and Torres Strait Islander peoples which are capable of bridging the gap in health standards by 2018.
- To ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.
- To working collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples.
- To building on the evidence base and supporting what works in Aboriginal and Torres Strait Islander health, and relevant international experience.
- To supporting and developing Aboriginal and Torres Strait Islander community-controlled health services in urban, rural and remote areas in order to achieve lasting improvements in Aboriginal and Torres Strait Islander health and wellbeing.
- To achieving improved access to, and outcomes from, mainstream services for Aboriginal and Torres Strait Islander peoples.
- To respect and promote the rights of Aboriginal and Torres Strait Islander peoples, including by ensuring that health services are available, appropriate, accessible, affordable, and of good quality, and
- To measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

This is a major development and one that we now need to work together to capitalise on. Many people see this as a watershed in Indigenous policy – so the time is now to realise our goals and seize this moment.

To progress this new partnership, the Summit also finalised a series of targets to close the health inequality gap. These targets note that the achievement of the COAG goals requires a far more effective approach to Aboriginal and Torres Strait Islander health and in particular, those factors which are major contributors to current gaps in child mortality and the life expectancy gap.

We have therefore developed an integrated set of Close the Gap targets. These targets are grouped under four broad headings:

- Partnership Targets - to lock into place a collaborative approach to Indigenous health;
- Targets that focus on specific priority areas of child and maternal health, chronic disease and mental health and emotional and social wellbeing;
- Primary Health Care and other Health Services Targets; and
- Infrastructure Targets.

And we emphasise that 'cherry picking' specific targets or illnesses will not achieve the COAG goals.

Instead, we place far more reliance on integrated approaches to achieve the goals of equal access for equal need and equal health outcomes.

We argue that it is of limited value to say a particular condition or factor is important unless it is clear what the health target is, how it is to be achieved, indicative expenditure required (both recurrent and capital), program, workforce and infrastructure requirements to provide the necessary services and the monitoring, evaluation and management processes required.

The integrated sets of targets are designed to deal with these requirements, and mark a turning point for Aboriginal and Torres Strait Islander services. In particular as agreed by COAG, a partnership approach is proposed, involving Aboriginal people and their representative bodies, health agencies, government agencies and the wider community.

These targets should be seen as the first step in a continuing process, where their refinement and implementation can be conducted through a genuine partnership between government and Aboriginal and Torres Strait Islander and other organisations.

The details of the structure and processes of this partnership will have to be determined and are essential to the achievement of the COAG goals. A fresh Government approach to partnership and to its management, monitoring, evaluation and review processes is essential for the achievement of the COAG goals - a little bit more of the same will not close the gap.

These targets will be formally presented to the government and publicly released in the coming weeks. We are currently working with COAG Working Groups to ensure that the targets can be integrated into the COAG reform agenda for Indigenous issues.

And so, I want to conclude by considering the essential components for *Closing the Gap* in Indigenous health. But I would like to point out that these essential components are relevant to all aspects of Indigenous affairs policy, programs and service delivery.

The first is a principle of broad application. That is, the need for partnership. This is what *the Statement of Intent* for a new partnership is all about.

We can't achieve health equality by treating this as an issue solely for government to address, or solely for Indigenous peoples.

I believe we have now reached a point where people have begun to be convinced that achieving health equality is achievable. This is what the evidence tells us, even if we lost faith over the past decade.

So such partnership requires an honesty and integrity about what needs to occur and transparency about how we are travelling, and whether we are doing everything we can to achieve our longer term goal.

Secondly, we need to ensure the full participation of Indigenous peoples in policy making processes and health programs in particular. We need to adopt a proactive approach to Indigenous health that has a prevention focus and builds a comprehensive primary health care approach.

Third, and related to this, is that high quality, integrated primary health care should be prioritised.

A focus on primary health care interventions addressing chronic diseases can be expected to have a significant impact on Aboriginal and Torres Strait Islander peoples' life expectation. Critically for the Indigenous population, primary health care identifies and treats chronic diseases (including diabetes, cardiovascular and renal disease) and their risk factors. Primary health care also acts as a pathway to specialist and tertiary care, and enables local (or regional) identification and response to health hazards; transfer of knowledge and skills for healthy living; and identification and advocacy for the health needs of the community.

There should also be continued support for Aboriginal community controlled health services. There is evidence that they are a highly effective process for the provision of primary health care. There should also be independent research conducted to determine the success factors and governance issues which contribute to achieving the most effective community controlled health services possible.

The expansion of community controlled health services must take place alongside efforts to improve the accessibility of mainstream services. It should also be accompanied by health care programs focusing on specific diseases. If, through these, early stage symptoms are detected not only can suffering be prevented, but cost savings made.

The fourth requirement is that we integrate targets for health equality into policy and programs across all governments. The Prime Minister announced at the *National Indigenous Health Equality Summit* in March that a new *National Indigenous Health Equality Council* will be established and operate from July this year. Its role should include advising on the implementation of targets and benchmarks. This provides an opportunity to embed the targets into policy and practice nationally.

And this is very much a work in progress. The Steering Committee for the Close the Gap Campaign continues to work with COAG and Australian governments to progress the adoption of the targets, and their integration into the National Strategic Framework for

Aboriginal and Torres Strait Islander Health, the Aboriginal and Torres Strait Islander Health Performance Framework and the Productivity Commission's Overcoming Indigenous Disadvantage framework. It is hoped that in the near future these policy frameworks and indicators will be linked to benchmarks and targets to achieve Indigenous health equality by 2030 or earlier.

There is sufficient evidence to demonstrate that a targeted approach will work and that the improvements sought in Aboriginal and Torres Strait Islander peoples' health status are achievable. For example, a recent review of Aboriginal primary health care states that:

International figures demonstrate that optimally and consistently resourced primary health care systems can make a significant difference to the health status of populations, as measured by life expectancy, within a decade. For example, in the 1940s to the 1950s in the United States, Native American life expectancy improved by about 9 years; an increase in life expectancy of about twelve years took place in Aotearoa, New Zealand over two decades from the 1940s to the 1960s.

Figures from within Australia demonstrate dramatic improvements in infant mortality (for example from 200 per 1,000 in the mid 1960s in Central Australia to around 50 per 1,000 by 1980) through the provision of medical services.¹⁷

The fifth essential is the adequate resourcing of commitments to Indigenous health. Research suggests that addressing Aboriginal and Torres Strait Islander health inequality will involve no more than a 1% per annum increase in total health expenditure in Australia over the next ten years. If this funding is committed, then the expenditure required is then likely to decline thereafter.

Only with funding commitments that are proportionate to the outstanding need in communities will it be feasible for governments to meet the outstanding primary health care and infrastructure needs of Aboriginal and Torres Strait Islander communities within 10 years.

This has been acknowledged in the Statement of Intent which talks of funding matching need to achieve equality.

Generally, primary health care is a responsibility of the federal government - but savings made here can prevent engagement of Aboriginal and Torres Strait Islander peoples with the secondary and tertiary systems, which are predominately responsibilities of the states and territories. The states and territories also have significant responsibilities for service delivery in areas which impact on health outcomes, such as housing.

In light of the comprehensive national frameworks and strategies in place, it would appear that there exists a solid basis for governments to work together to address the projected funding shortfall. Additional funding to the states and territories could be made contingent on the agreement of states and territories to match federal contributions.

An equitable distribution of primary health care rests on a prior effort to increase the numbers of health professionals, and particularly Indigenous health professionals, to provide the services.

¹⁷ Dwyer, J., Silburn, K. and Wilson, G., *op.cit.*, p40.

Any substantive address must begin at school – students must not only complete school, but they must receive a thorough grounding in maths and science to enter medicine. Recruitment campaigns must start focusing on Aboriginal and Torres Strait Islander young people at an early age.

Finally, to support these commitments and proposed targets, further reform of health financing models and data collection methods is required.

There has been significant work done to improve health financing models towards processes that identify the level of need. For example, quantifying the Medicare Benefit Scheme spending shortfall on Aboriginal and Torres Strait Islander peoples has provided a basis for quantifying the primary health care shortfall and stimulated initiatives to ensure Aboriginal and Torres Strait Islanders enjoy greater access to Medicare and the Pharmaceutical Benefits Scheme. Further work is required to quantify and enable the level of need to be quantified nationally, as well as at a regional and sub-regional level for both primary health care access and health infrastructure provision.

Ultimately, there is no larger challenge to the sense of decency, fairness and egalitarianism that characterizes the Australian spirit, than the current status of Aboriginal and Torres Strait Islander health. *Closing the Gap* is not only a major human rights issue in Australia, but it should be a matter of pride for us all.

And *Closing the Gap* is not impossible, although it will require long term action and commitment.

Committing to a year 2030 time frame to achieve this is feasible. It is also a long time in which to accept that inequality would continue to exist.

But history shows us that an absence of targeted action and a contentedness that we are ‘slowly getting there’ is not going to result in the significant improvements in health status that Aboriginal and Torres Strait Islander peoples deserve - simply by virtue of the fact that we are members of the human race and of the Australian community.

We have an unprecedented opportunity to make this happen due to the recent commitments of Australian governments and the adoption of national Indigenous Health Equality targets, but targets on their own will not suffice - we need action on many fronts to address the many divides that lay behind the gap. And we do need to augment current efforts.

The failure of the policies and programs of the past twenty years to achieve significant improvements in Aboriginal and Torres Strait Islander health status, yet alone to close the gap, reveal two things that Aboriginal and Torres Strait Islander peoples and the general community can no longer accept from governments.

First, we can no longer accept the making of commitments to address Aboriginal and Torres Strait Islander health inequality *without* putting into place processes and programs to match the stated commitments. Programs and service delivery must be adequately resourced and supported so that they are capable of achieving the stated goals of governments.

Second, and conversely, we can also not accept the failure of governments to resource programs properly. *A plan that is not adequately funded to meet its outcomes cannot be*

considered an effective plan. The history of approaches to Aboriginal and Torres Strait Islander health reflects this.

The combination of the healthy economic situation (at least in terms of the surpluses) of the country, the substantial potential that currently exists in the health sector and the national leadership being shown through the COAG process, means that the current policy environment is ripe for achieving the longstanding goal of overcoming Aboriginal and Torres Strait Islander health inequality. Steps taken now could be determinative.

The gap - the Indigenous health equality gap - can be closed, and closed in our lifetimes. The foundations are in place, but none of us can afford to rest on our laurels - it is imperative that we hold Australian governments to their commitments so that by 2030 any Indigenous child born in this country has the same chances as his or her non-Indigenous brothers and sisters to live a long, healthy and happy life.

Thank you.

6. Essentials for Social Justice: Caring for Culture, Caring for Country

7 July 2008

John Gorton Building Bunker Theatre King Edward Terrace – Canberra

*Speech at the Department of Environment, Water, Heritage and the Arts
National Aborigines and Islanders Day Observance Committee (NAIDOC) Week
Celebrations*

Good afternoon ladies and gentlemen.

I begin today by paying my respects to all of the Ngunnawal peoples, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. Thank you Aunty Matilda for welcoming us to your land.

I would also like to thank the Department of Environment, Water, Heritage and the Arts for your invitation for me to speak today and for the opportunity to participate in your NAIDOC celebrations for 2008.

For those who don't know me, I am the Aboriginal and Torres Strait Islander Social Justice Commissioner and National Race Discrimination Commissioner at the Human Rights and Equal Opportunity Commission or HREOC.

HREOC is a national, independent, statutory body established under the Human Rights and Equal Opportunity Commission Act 1986. HREOC is your national human rights institution.

As the Social Justice Commissioner my functions are to monitor the enjoyment and exercise of human rights for Indigenous Australians.

Under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) and the *Native Title Act 1993* (Cth) I am required to produce annual social justice and native title reports, some of which I hope you are familiar. These reports are tabled in the federal parliament each year and are available on HREOC's website.

This years NAIDOC theme is *Advance Australia Fair*, a change from the 1972 theme of *Advance Australia Where?* This theme aims to encourage people to reflect on the Australian principle of "a Fair go" and for Australians to consider the inequalities still experienced by Aboriginal and Torres Strait Islander peoples in this country today.

Aden Ridgeway, the Chairperson of the National NAIDOC Committee highlights the fact that while Australia as a nation is 'one of the most prosperous countries in the developed world we cannot overlook those in our society who are disadvantaged and whose living conditions are more comparable to struggling nations'.

In celebrating NAIDOC week here today, it is appropriate to reflect on the situation for Australia's Indigenous peoples, the first peoples of this land, many of whom have cared for and been custodians of our country for many, many generations.

The challenge put forward to the Labor Government by this years NAIDOC theme, is ‘to deliver real change and improvements in the lives of Aboriginal people’.

This speech is the fifth in a series of six that I am delivering nationally, which aim to outline an agenda for change across all areas of Indigenous affairs. I have termed this series of speeches Essentials for Social Justice.

Previous speeches in this series have focused on: the needs of the stolen generations; reform and participation; achieving health equality and the close the gap campaign; and family violence and the northern territory intervention.

This leads me to the topic of my talk today which will focus on land and culture and is titled: ‘Caring for Culture, Caring for Country’.

Caring for country is a phrase that those of you working in the Department of Environment, Water, Heritage and the Arts should be familiar with. However, the phrase ‘caring for country’, which the government has now branded their policy platform as ‘caring for our country’, must be based in the full understanding of what this means to Indigenous people. ‘Caring for country’ is not just the title of a policy, it is Aboriginal law.

The importance of culture and its relevance to Indigenous people’s relationship to our lands, is not completely understood and acknowledged by all Australians.

This is evidenced by the fact that governments continue to develop Indigenous land policy in isolation to other social and economic areas of policy.

In saying this, it is encouraging to hear both the Attorney General and the Minister for Families, Housing, Community Services and Indigenous Affairs discuss the need to improve the social, cultural and economic outcomes of land policy, in particular native title. The Attorney General has also announced his desire to encourage all governments at the upcoming Native Title Ministers Meeting in July, to work together through ‘co-operative federalism’ to find a new approach to resolving native title and land issues.

Minister Jenny Macklin, in her Mabo Lecture, reiterated the frustration that we as Indigenous peoples feel. That is that Indigenous people have access to varying levels of ownership, control, use and access, or management of approximately 20% of the Australian continent, but are limited in our ability to use this significant asset to meaningfully leverage economic, social, and cultural outcomes.

The ability of Indigenous people to take the greatest advantage of the native title system for our economic and commercial benefit - to leverage the system - is contingent on many factors that are often outside our control.

As I reported in my *Native Title Report 2007*, and this has been echoed by senior experts in the field, the native title system - as it operates today – does not often deliver on the original objective of the *Native Title Act*. The original purpose of this legislation was to recognise and protect native title; in particular,

to provide a national system for the recognition and protection of native title and for its co-existence with the national land management system.

On many occasions, outcomes are being realised through negotiated agreements – although these often do not ultimately determine and recognise the underlying native title rights of Indigenous peoples. States and Territories have also now begun to engage more proactively in their legislative and policy endeavours to improve the current system.

However, **there is room for much improvement.** In some areas, governments continue to pose a significant barrier to the realisation of indigenous people's advancement, particularly through the oppositional approach that is taken to the recognition of Indigenous peoples' rights to land through the formal native title system.

The outcomes of agreements are in large part determined by the attitude of governments and other parties to the negotiations.

With the government purporting a changing attitude towards improving the lives of Indigenous people, there are a number of critical steps that are required to ensure that this aspiration is fully achieved.

These steps include:

1. a full understanding, recognition and respect for Indigenous peoples rights to our culture and our country;
2. developing policy that deals with Indigenous disadvantage from a holistic perspective;
3. engaging Indigenous people as major stakeholders in the development and implementation of policies and programs that affect us; and
4. increasing the cross cultural competence of bureaucracy to ensure policies and programs support the sustainability and self determination of Indigenous communities.

These steps are very broad and apply to all area's of Indigenous policy including land management, cultural heritage and native title.

Only once we have successfully implemented these steps can we pride ourselves as a mature nation, one that embraces Indigenous peoples, our unique culture and traditions and recognises and respects us as the First Peoples of Australia.

So how do we do this? What do these points mean in practice? Particularly for you, the Department of Environment, Water, Heritage and the Arts.

The first step is a full understanding, recognition and respect for the rights and responsibilities of Indigenous peoples to our culture and our country by the Australian community and all levels of Government.

Through the introduction of legislation such as the *Native Title Act*, and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* the Australian Government and the Australian people are achieving a degree of recognition and respect for the unique rights that Indigenous peoples have to our lands. Policies and programs developed by your Department, including the Indigenous Heritage Program and Indigenous Protected Areas are also contributing to increasing levels of recognition.

However, as I stated earlier, I am not convinced that there is a full understanding of the importance of culture and its relevance to Indigenous peoples' relationship to country, or to the broader social and economic improvement in the lives of Indigenous people.

In saying this, it is important to appreciate the two world views of what country means to people. For non-Indigenous people and land owners, land is a commodity to be bought and sold, it is an asset to make a profit from, and it provides a level of sustainability for those who choose to make a living off it, for as long as it is tenable. For non-indigenous Australians, land may also be their 'home'.

Land is also our 'home'. However, the responsibilities that go with our home do not allow us to sell up or move on when it is no longer tenable, the land is our mother, it is steeped in our culture, and we have a responsibility to care for it now and for generations to come. This care in turn sustains our lives – spiritually, physically, socially and culturally - much like the farmer who lives off the land.

An old friend of mine, Galarrwuy Yunipingu expresses this understanding very clearly, I quote:

'The land is my backbone...I only stand straight, happy, proud and not ashamed of my colour because I still have land. I can paint, dance, create and sing as my ancestors did before me.

I think of land as the history of my nation. It tells me how we came into being and what system we must live. My great ancestors, who live in the times of history, planned everything that we we practice now. The law of history says that we must not take land, fight over land, steal land, give land and so on.

My land is mine only because I came in spirit from that land, and so did my ancestors of the same land...My land is my foundation'.¹⁸

Galarrwuy's words highlight the fact that our land is fundamental for a healthy individual, family, clan group, society, community, and nation. Aboriginal law and life originates in and is governed by the land. Aboriginal identity and sense of belonging comes from our connection to our country.

International law, including the *Declaration on the Rights of Indigenous Peoples*,¹⁹ also provides for the protection of Indigenous peoples rights to care for our country, and rights to care for our culture.

In particular the Declaration affirms and recognises Indigenous peoples rights to maintain and strengthen our relationships with our lands, territories, waters and resources and to ensure their viability for future generations. This is reinforced by the right to practice and revitalise our cultural traditions and customs including our dances, songs, and stories which also contribute to the broader Australian communities visual and performing arts and literature.

¹⁸ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report, January – June 1994*, Preface, available online at: <http://www.austlii.edu.au/au/other/IndigLRes/1995/3/index.html>, accessed on 30 June 2008. As cited in Australian Catholic Social Justice Council, *Recognition: The Way Forward*.

¹⁹ http://www.hreoc.gov.au/social_justice/declaration/assembly.html

To fully understand this, it must be accepted and acknowledged that culture is the key to caring for country, and caring for country is in turn the key to the maintenance and strengthening of our culture and well-being.

This takes us to the second critical step which requires a holistic approach to overcoming Indigenous disadvantage.

Not only are land rights and native title policy inconsistent with other area's of policy, but each State and Territory have also developed alternative land regimes, which in some cases are inconsistent with the national approach.

In October 2007, the Australian National Audit Office released the findings of a performance audit into *Whole of Government Indigenous Service Delivery Arrangements*.²⁰ They found that the mainstreaming of Indigenous services provided Australian Government departments with an opportunity to develop more integrated solutions to entrenched Indigenous disadvantage.

While the report found that implementation of the Government's policy objective was progressing, a stronger collective focus by departments was required to meet their priorities, and to inform decisions relating to the effectiveness of ongoing administrative arrangements.²¹

However, the current Indigenous policy platform remains isolated, disconnected and disjointed. If there is to be real change in Indigenous peoples lives, governments must work collaboratively and develop policy that deals with Indigenous disadvantage from a holistic perspective.

There is an urgent need for Government to develop mechanisms which ensure that rights are expressed, applied and exercised equally and consistently across the country. Legislative arrangements are required which, while recognising the cultural diversity of Indigenous nations, provide a minimum standard across all levels and jurisdictions of government to:

- ensure the effective participation of Indigenous peoples in the development of policies which directly affect our lands and waters;
- consult with Indigenous peoples to get our free, prior and informed consent for any proposals on our lands and waters;
- emphasise policy approaches which are evidence based, supported by trial processes and ongoing evaluations that involve indigenous peoples; and
- ensure that legislative developments do not remove or restrict any existing rights; legislative or otherwise.

As Justice Merkel in the *Rubibi* Native Title case pointed out:

²⁰ http://www.anao.gov.au/uploads/documents/2007-08_Audit_Report_101.pdf

²¹ Australian Government, Australian Public Service Commission, *State of the Service Report: Whole of Government, APS developments*, available online at: <http://www.apsc.gov.au/stateoftheservice/0607/parttenddevelopments.htm>, accessed 26 June 2008.

'the resolution of native title claims is a means to an end, rather than an end itself. Achieving native title to traditional country can lead to the enhancement of self respect, identity and pride for indigenous communities native title can also be seen as a means of indigenous people participating in a more effective way in the economic, social, and educational benefits that are available in contemporary Australia. Obtaining a final determination of native title, where that is achievable, can be a stepping-stone to securing those outcomes but cannot, of itself, secure them'.²²

The native title system and land rights regimes should supplement and be supplemented by other relevant area's of policy to ensure that they are fully effective.

Prime Minister Rudd in his Apology to the Stolen Generations, committed 'to *Closing the Gap* between Indigenous and non-Indigenous people in the areas of life expectancy, educational achievement and economic opportunity'.

Statistics confirm that the health outcomes in rural and remote areas of Australia are adversely affected by poor health among Aboriginal and Torres Strait Islander peoples who make up a greater proportion of residents in those areas.

However, access to traditional lands can act as a determinant of health status, particularly where that land is culturally significant and provides sources of food, water and shelter.

A recent study conducted by the Menzies School of Health Research in collaboration with the traditional owners from Western and Central Arnhem Land, assessed the health outcomes of Indigenous people in relation to their involvement in natural and cultural resource management.

The Healthy Country: Healthy People Study found that Indigenous participation in both customary and contemporary land and sea management practices, particularly by those people living on homelands, are much healthier, with significant reductions in the rates of diabetes and cardiovascular disease.²³

The study also confirmed that removing Indigenous peoples from their homelands had a negative effect on the health of both the tropical landscapes and those people removed, demonstrating a direct association between Indigenous 'caring for country' practices and a healthier, happier life.

Likewise, for Wattaru, South Australia in the Anangu Pitjantjatjara Lands, the health outcomes have also improved, and this is in part credited to the Ku-ku Kan yini Project initiated in 2003. This local community --- South Australian Government partnership has been successful in combining traditional and contemporary land management techniques resulting in increased employment outcomes and self esteem in the community, and has assisted in the control of diabetes.²⁴

Another area that requires recognition of the contribution to improving the lives of Indigenous people, is that of the indigenous art industry. This industry contributes \$100

²² Rubibi Community v State of Western Australia (No 7) [2006] FCA 459

²³ Charles Darwin University, Origins Indigenous Health, *Healthy Country Healthy People*, Newsletter, Edition 2-2007, pp13-14

²⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, pp26-27, also available online at: http://www.hreoc.gov.au/social_justice/sj_report/sjreport05/pdf/sjr-chapter02.pdf , accessed 30 June 2008.

million annually to the Australian economy with very little of this actually being returned to the artists or their communities and no protection to ensure that it does. However the social, cultural and economic benefits that are derived from the Indigenous art centres are undeniable.²⁵

The Indigenous arts sector generates important benefits in the area of biodiversity maintenance and natural resource management as well as maintaining culture and generating income and employment opportunities.

If we are serious about *Closing the Gap* for Indigenous people, particularly those living in remote communities, then we must start with what we know. That is that, employment and economic development opportunities that are built on caring for country, and caring for culture, improves the lives of Indigenous people.

This of course is not only beneficial to Indigenous people. Indigenous peoples living on country also play a major role in addressing issues of national interest.

For example, Indigenous people across Australia, contribute to managing the impact of feral animals and weed control, as well as providing *border protection* in remote coastal areas. And as many of you here today would know, much of this work is done voluntarily.

Through programs such as *Working on Country*, a program administered by your Department, environmental outcomes such as the maintenance, restoration, and protection of Australia's land, sea and heritage environment, can be achieved by contracting Indigenous people to provide these necessary environmental services. Programs such as this benefit the Australian community, but at the local level, employment opportunities which allow the Indigenous custodians of the land to continue their cultural responsibilities also advance the livelihoods of Indigenous people, and meet the quadruple bottom line. That is, the environmental, economic, social and cultural bottom line.

This approach to Indigenous rights was also reflected in the *1987 Rio Declaration*,²⁶ which recognises the vital role of Indigenous communities knowledge and traditional practices in environmental management, and the 1992 Agenda 21, which promotes the development of national policy approaches to Indigenous participation in land and resource management and caring for country.

One area of national policy development which is still in its infancy in Australia is related to climate change. With the ratification of the *Kyoto Protocol*, Australia is now committed to a target of reducing greenhouse gas emissions by 60 per cent on 2000 levels by 2050.

But what does this mean for Indigenous Australians?

At the recent *United Nations Permanent Forum* in New York, Indigenous peoples from around the world voiced their concerns which predict that they will bear the brunt of climate change impacts. They also expect that they will be required to contribute their cultural and intellectual knowledge on Australia's valuable biodiversity, to develop mitigation strategies 'in the national interest'.

²⁵ National Association for the Visual Arts Ltd, *Submission to the Inquiry into Australia's Indigenous Visual Arts and Craft Sector*, 24 November 2006, p1

²⁶ http://cfam.eresources.com/docLib/20080625_Rio_Declaration_on_Environment.pdf

The effects of climate change are already being experienced by Indigenous peoples, particularly on island communities, both in the Torres Strait and other islands and communities along the coastline of Australia, and also those Indigenous groups whose lives, and maintenance of culture, depends on the Murray Darling River. Impacts include environmental refugees', dispossession, and environmental, cultural and spiritual impacts.

However, to date, there is little data or analysis on the direct impacts of climate change on Indigenous peoples in Australia.

Australia is rapidly developing climate change policy and departments such as yours, the Department of Climate Change, the Department of Families, Housing, Community Services and Indigenous Affairs, the Attorney General's Department and others including the Department of Health, must work together with the full engagement and participation of Indigenous people in the development of policies both domestically and internationally, concerning climate change from the outset.

The involvement of Indigenous peoples in international negotiations for a Post Kyoto climate change regime is essential. Particularly, in relation to the development of culturally inclusive rules around national emissions trading schemes and the potential for international investment.

On my reading of the Garnaut Review, I have found limited reference to Indigenous peoples, and no factoring in the impact *a national trading scheme* might have on Indigenous land tenure. Similarly, there have been only one submission from Indigenous organisations outlining an Indigenous perspective – something that might also reflect on the lack of engagement with Indigenous peoples on this issue to date.

Garnaut's work is likely to have a big impact on the design of a national emissions trading scheme set to be introduced by 2010 and indigenous people don't seem to be in the game.

Minister Macklin in her Mabo Lecture also announced that over the next six months the Australian government will be embarking on a new approach which will include the development of the Indigenous Economic Development Strategy. The Minister identified the need to maximise opportunities for economic development through native title and land based outcomes. Climate change policy, in the context of mitigation strategies should also be discussed in the development of the *Economic Development Strategy*.

Here is an instance where two policies could provide a collaborative approach to achieving outcomes.

If you need an example of how this would work in a practical sense you should look to my *Native Title Report 2007*. It profiles the *Western Arnhem Land Fire Abatement (WALFA) Project*.

The project anticipates the potentially devastating impacts of climate change for Indigenous peoples, and aims to generate opportunities for Indigenous communities to engage in culture based economies. The culture based economy concept first and foremost supports Indigenous people's choices around economic development. It fosters an approach around the provision of environmental services as a means to support livelihoods and an economic approach that works primarily through Indigenous people living on country.

The Fire Abatement Project in Western Arnhem Land, where savannah burning is mitigating wild fires, has resulted in a tradable carbon offset. Traditional owners have entered a commercial agreement based on traditional Indigenous ecological knowledge, which is providing economic, cultural, social, and environmental benefits for Indigenous people and the wider Australian community.

Indigenous participation in caring for country and land and environmental management programs such as the WALFA offer opportunities for the government and industry to create and support real jobs for Indigenous peoples living in remote regions. Community initiatives such as WALFA are allowing Indigenous people to meet cultural obligations to their lands and waters, and at the same time, provide a service to the community.

This is an opportunity for the Australian government to leave behind the legacy of Indigenous disadvantage and policy failure and to be innovative and serious about securing economic outcomes that meet both the aspirations of government, but also meet the social and cultural aspirations for Indigenous Australians.

The third critical step required to achieve a significant improvement in the lives of Indigenous Australians: is for the Australian Government to recognise, endorse and treat Indigenous people as major stakeholders in the development of all policy in Australia, particularly policy that directly or indirectly affects our lives and the exercise and enjoyment of our human rights.

There is a pressing need to ensure the full participation of Indigenous peoples in policy making processes.

It must be fully accepted that Indigenous stakeholders are, in the words of Jenny Macklin, 'substantive players and stakeholders in the future development of the nation'.

Effective Indigenous participation in decision making has been confirmed as essential to ensuring non-discriminatory treatment and equality before the law, and recognises the cultural distinctiveness and diversity of Indigenous peoples.

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 invest in building the capacity of Indigenous communities. This includes the lack of support for Indigenous staff, and the lack of appreciation of the skills that we bring, in particular to land and sea management on our country.

One universally recognised right is the right of Indigenous peoples to the ownership and control of their lands, territories and natural resources, and to give - or not give - their free, prior and informed consent over developments on their land. This principle applies not only to administrative acts and decisions about land use, but also to the legislative process itself.

'Free, prior and informed consent recognises indigenous peoples' inherent and prior rights to their lands and resources and respects their legitimate authority to require that third

parties enter into an equal and respectful relationship with them, based on the principle of informed consent'.²⁷

The *Declaration on the Rights of Indigenous Peoples* reinforces the existing rights of Indigenous people to give their free, prior and informed consent before certain actions affecting them can occur, including:

- a right to the land we traditionally own;
- a right to compensation for land if it is taken, occupied, used or damaged without our free, prior and informed consent;
- a right to the conservation and environmental protection of our country; and most importantly
- a right to determine and develop priorities and strategies for the development or use of our lands and resources.

However, for indigenous people to fully engage as stakeholders, we must also be fully appraised of the benefits and the costs resulting from legislative and policy developments, or negotiated agreements.

In my *Native Title Report 2006*, I present the results of a national survey I conducted on land, sea and economic development. The survey results demonstrated that the majority of traditional owners did not have a good understanding of land agreements. This raises questions about our capacity to effectively participate in negotiations and consequently limits our ability to leverage opportunities from our lands.

The survey also highlighted the need for an information campaign to improve understanding of land regimes and the funding and support programs available to assist indigenous people in pursuing economic and commercial initiatives.

Across remote Australia, Indigenous Coordination Centres (ICC's) in particular are responsible for brokering capacity development and employment, participation, training and enterprise opportunities for Indigenous Australians in their region.

To ensure that the Government's policies are appropriately targeted to achieve the desired outcomes, the Government will require reliable information about traditional owner priorities for land. In the same way, traditional owners require information about the Government's policies before they can make informed decisions about land and future social, cultural, and economic opportunities.

There is currently no mechanism or communication strategy for this to occur.

The fourth and final step requires a change in approach by the bureaucracy from a system that predominantly meets the policy aspirations of government to a system that is accountable to the achievement of healthy Indigenous communities through sustainable development and self determination.

The support we require from government is not in the form of mainstreaming, or complete regulation of our affairs. It will be in the form of collaborative partnerships where both

²⁷ Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, Twenty-second session, 19-13 July 2004, p.5.

indigenous people and governments work together as equal partners, to achieve sustainable outcomes that address the development aspirations of Indigenous peoples.

While much of the last 100 years of Indigenous policy has been claimed to have been paved with good intentions, the reality is that it has perpetuated the disadvantage experienced by Aboriginal and Torres Strait Islander peoples today.

You now have an opportunity to create a new path, both paved with good intentions but overcoming the current state of affairs, and leaving behind the legacy of past governments.

This may require legislative or constitutional amendments. It may require heads of government to work together collaboratively to improve the lives of indigenous peoples. It definitely will require the full participation and engagement of indigenous peoples in decision-making at all levels, from the local level to providing ministerial advice. And it definitely will require government officials to change their attitudes towards indigenous peoples as stakeholders in the nation.

With a new government in place, we have an opportunity to start fresh. This started with the Apology that symbolised a clean break from the past policies and governments. It is crucial that in seeking to find a new approach to addressing indigenous disadvantage, that we work collectively to achieve this.

Friends, I would like to encourage you all today, in the spirit of this years NAIDOC theme, to 'Advance Australia Fair' and be part of advancing the livelihoods of Aboriginal and Torres Strait Islander people through the full acceptance that culture is the key to caring for country, and caring for country is the key to the maintenance and strengthening of our culture and well-being.

When your developing policy regarding Indigenous lands, remember that 'caring for country' is not just the title of a policy, it is Aboriginal law.

Only when governments are willing and able to:

- fully understand, and respect Indigenous peoples rights to our culture and our country, and
- develop policy that deals with Indigenous disadvantage from a holistic perspective, with the full and effective participation and engagement of Indigenous peoples, will we have been successful in changing the mindset of the bureaucracy and improving the lives of our Indigenous brothers and sisters.

I hope you enjoy NAIDOC week and participate in the many events that are taking place around Canberra this week.

And please remember, from self respect comes dignity, and from dignity comes hope.

7. Essentials for Social Justice: The Future

Hawke Centre
University of South Australia
Adelaide

12 November 2008

I begin by paying my respects to the Kurna peoples, the traditional owners of the land where we gather today, I pay my respects to your elders, to the ancestors and to those who have come before us, And thank you, for your generous welcome to country for all of us.

Can I thank Professor Peter Buckskin and the David Unaipon College of Indigenous Education and Research at the University of South Australia for the invitation to join everyone here tonight.

This speech is the final in a series of six that I have delivered nationally over the past year outlining an agenda for change for Indigenous affairs; I have termed this series of speeches *Essentials for Social Justice*.

Each speech has discussed a particular challenge that we face as a nation if we are to realize true equality and respect for our Aboriginal and Torres Strait Islander brothers and sisters.

I have made clear throughout this series of speeches that these challenges are shared ones. They are not simply challenges for governments, and they are not simply challenges for Indigenous peoples.

They identify shared ambitions where every Australian has a role to play:

- With governments providing leadership, being accountable for their actions, embracing genuine partnership with Indigenous peoples and not being the barrier to our advancement – as they so often are.
- With Indigenous peoples embracing the prospect of a better life for our children and families, recognising that we need to be at the centre of creating such change and accepting the primary responsibility for the wellbeing of our communities.
- And with the broader Australian community offering their support and treating us with dignity and respect, with the firm *expectation* that we will have the same opportunity to thrive and prosper as *all other* Australians do, and where our cultures are celebrated as among the great strengths of our diverse nation rather than being feared.

The first speech in this series was titled 'Sorry'. I delivered it in December last year and outlined an agenda for addressing the needs of the stolen generations and the delivery of a national apology.

The second speech was titled '*Reform*' and outlined an agenda for changing the way governments go about their business and are accountable for their performance. I will return to this issue as despite everything that has occurred this past year, it is this fundamental issue on which there has been the least progress and which remains the biggest hurdle to achieving positive change.

The third speech was titled '*Protecting Indigenous children*'. It identified a range of lessons that we can all learn from Indigenous communities that are facing up to the violence in their communities, And it identified a way forward on the Northern Territory intervention to ensure that it is non-discriminatory and ultimately capable of creating sustainable outcomes for our communities. These two objectives – sustainability and non-discrimination – are integrally linked. Sustainability *will not* be achieved through discrimination.

The fourth speech was titled '*Close the Gap*' and it reflected on what is needed to achieve health equality for Indigenous Australians within a generation, and to create equal life chances for Indigenous children. This is a deceptively hard challenge. And there have been some good advances on this over the past year, but much still to do.

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

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

So, to tonight's speech, it is simply titled: '*The future*'.

In it, I want to reflect back on the past twelve months of the new government and see how they have performed in addressing these essentials for social justice. And in doing so, I want to identify the challenges that exist for the future.

Many of the challenges identified in the *Essentials* speeches relate to the way we *do* things and the change of mindset that is necessary to crash through the barriers that we have created over the past century and over the past decade.

Accordingly, these speeches do not identify every issue or area where there needs to be focused attention – and that has not been my intention.

What I have sought to do are two things:

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

To borrow the words of someone who is fairly popular at the moment, I set out to create a vision for 'change we can believe in'.

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

Obama has been described by a number of commentators this past week as a 'transformational' figure.

And transformation is what we need here in Australia on issues facing Aboriginal and Torres Strait Islander peoples.

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

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

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

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

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

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

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

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

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

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

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

And so I assess the performance of the Rudd government on this basis – by considering whether its actions to date have matched up to its ambitious words of hope and respect.

And on this basis, while accepting that it is a work in progress, I would describe the performance of the new government on Indigenous affairs as follows:

- First, some terrific initiatives that have broken away from the problems of the past;
- Second and related, some hefty commitments that are bold and that promise much – but on which we need to wait and see if the action matches the intent;
- Third, some very mixed messages – where some actions contain serious and worrying contradictions;
- Fourth, on some issues a level of inaction in moving beyond the rhetoric and on others, a lack of thought, yet alone action, on critical elements of reform that are necessary if we are to truly shake up the status quo.

So let me explain.

First, as we recall these words from the early days of the new government, you would have to agree that they got off to a spectacular start and they set expectations very high.

The Apology and the commitment targets to *Close the Gap* have seen this government take a fundamentally different approach to its predecessor.

They have almost instantaneously wiped away the absolute folly of promoting the Apology as a tool of division rather than unity, and they have similarly rejected the folly of committing to practical reconciliation without actually setting an end goal, which had left the government entirely unaccountable for its performance or actions.

When the Prime Minister, the Leader of the Opposition, and Ministers for Health and Indigenous Affairs, along with every major Indigenous and non-Indigenous peak health body and others signed a *Statement of Intent to close the gap* in health inequality This reflected the significant change in ambition.

The *Statement of Intent to Close the Gap* commits the government, working in partnership, to:

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

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

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

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

So this *Statement of Intent to Close the Gap* reflects one of the most hefty commitments made by the new government.

And this is my second comment - only time will tell whether the action matches up to the intent.

As we witness one of the most significant global financial meltdowns in modern times, the acid test is – what level of priority will Indigenous affairs be given by the new government? What value do you give to these commitments? What price equality?

I firmly believe that this is one of those issues that governments have to ‘bite the bullet’ on. There is simply never a ‘good time’ to deal with Indigenous issues. Waiting for the right time is the reason why we have never seen the level of effort needed to transform the situation.

And we need a qualitatively different approach if we are to close the gap. A little bit more of the same will not close the gap.

We know that over a longer time period, investment now will save money into the future as we transform our people and communities from being unhealthy, unemployed and uneducated. So it makes economic sense – leaving aside the obvious human issues that would otherwise fester and continue to destroy our peoples lives and communities.

So on this issue: a bold start. The level of bipartisan support as well as support across governments also means that there is an unprecedented opportunity to turn these commitments into sustained action. So we shall see.

In contrast though, the third comment I have about the new government’s performance is that there have been contradictions that exist between the commitments made by the government and their actions.

Of major concern in this regard is the rapid development of new policies but the absence of significant engagement and participation of Indigenous peoples.

Major reform processes have been announced, as well as numerous inquiries that will impact significantly on Indigenous peoples, with very limited engagement with Indigenous peoples.

I am constantly being told by Indigenous peoples that they are overwhelmed by the level and the constant nature of change occurring in their communities. Some communities have to deal with changes to local government, regionalisation of their representative structures, as well as changes to *Community Development Employment Projects* (CDEP) *Welfare to Work* and other welfare programs, reforms to indigenous education assistance, having significant changes to the rules that govern Indigenous corporations being phased in, as well as changes to native title laws, dealing with issues relating to water rights, environmental protection and climate change, and so forth.

Often one set of changes is introduced and then a further set follow – before it is possible to even know the impact of the previous reforms.

And this is before getting to the red tape that many communities have to deal with.

In this regard, not enough has changed between the old and the new governments: it is policy being '*done to*' Indigenous peoples rather than being done *in partnership* with us.

Where there is a focus on consultation and engagement – such as the review of the NT intervention – there is then only a tenuous connection between the outcomes of this and the decisions taken by government. The recommendations of the NT Review, for example, provide an opportunity to re-engage with Indigenous communities and begin to give them a role in the running of their communities and in determining their own futures. Hopefully it will be an opportunity taken.

So despite the new government emphasising the need for a new partnership if we are to truly change the status quo, there has been very little time devoted to nurturing and achieving this to date.

And on this issue – above all others - the difference between the commitments made by the Prime Minister and the actual implementation by the government is quite noticeable.

Federal government departments have, in my view, got out of the habit of regularly consulting with Indigenous peoples and in many instances don't seem to know how to do it. We are certainly not at a point where bureaucrats value such engagement or understand its importance in terms of respect and in terms of improving the quality of decision making and policy formulation.

Ultimately, this is an issue of fundamental concern to me. It is why the process for establishing a new National Indigenous Representative Body is so important. For all of the faults of ATSIC, we rarely saw anything like the yawning chasm that currently exists between the actions of government and the absence of engagement with Indigenous communities.

A further example of where the approach of the new government is riddled with contradictions is the Northern Territory intervention.

The government has announced that it accepts the overarching recommendations of the NT Intervention Review Board. These include resetting the relationship with Indigenous peoples based on genuine consultation, engagement and partnership; and ensuring that government actions affecting Indigenous communities respect human rights and conforms with the *Racial Discrimination Act 1975 (RDA)*.

How does the government intend to meet these commitments that they agree with? Well the Government has stated that the intervention cannot rely on discriminatory measures into the longer term. But they have decided to continue to suspend the *RDA* for at least another twelve months and continuing with the compulsory income management regime that is currently in place.

This position neither respects human rights, conforms to the *RDA*, *nor* involves genuine engagement, consultation and partnership with Indigenous peoples.

As I have long stated, measures to protect children and ensuring human rights compliance should be seen as complementary and not as competing priorities. It is a major flaw of current policy approaches that this is not fully understood.

What I see as most disturbing about this contradictory position, however, is the damage it does to Indigenous peoples' hopes and belief in the integrity of the government.

As an example, on 3 July this year there was a very significant gathering of Aboriginal men near Alice Springs for the Aboriginal men's health summit. The outcome of that summit was the Inteyerrkwe Statement. It reads:

"We the Aboriginal males from Central Australia and our visitor brothers from around Australia gathered at Inteyerrkwe in July 2008 to develop strategies to ensure our future roles as husbands, grandfathers, fathers, uncles, nephews, brothers, grandsons, and sons in caring for our children in a safe family environment that will lead to a happier, longer life that reflects opportunities experienced by the wider community.

"We acknowledge and say sorry for the hurt, pain and suffering caused by Aboriginal males to our wives, to our children, to our mothers, to our grandmothers, to our granddaughters, to our aunts, to our nieces and to our sisters.

"We also acknowledge that we need the love and support of our Aboriginal women to help us move forward."

The men called for a range of measures to assist them in combating violence in their communities. These included:

- The establishment of community-based violence prevention programs, including programs specific to Aboriginal men.
- Establishment of places of healing for Aboriginal men, including men's 'sheds', short term 'drying out' places, and more resources for long-term rehabilitation of Aboriginal men with alcohol and other drug problems, preferably within their own community as well as 'half-way' houses to either give 'time out' or time to move slowly back into work, family and training; and
- Measures to build the capacity of Aboriginal men in literacy and numeracy to access locally-based jobs, and the linking of education and training to locally-based employment.

This Summit was extremely significant. Aboriginal men across the Territory participated, as well as from other states. It is still spoken of among Indigenous communities in the NT as an event of great pride and emotion for Aboriginal men.

And what has happened since?

In the Summit outcomes, the Aboriginal men called on the 'federal government and the Northern Territory Government to respond to its final report within three months (i.e., by the end of September, 2008)'.

There has been no such response.

Aboriginal men have clearly and in the most moving way indicated that they want to be part of the solution and not treated simply as the problem.

To date, they have not been supported.

For many, their hopes and ambitions have been dashed.

Instead, in announcing the preliminary response to the report of the NT intervention Review Board, the Minister for Indigenous Affairs has stated, and I quote, that ‘the development phase of the *‘Northern Territory Emergency Response’* – that is the phase that has been delayed by upwards of twelve months - ‘will commence when increased levels of personal and community responsibility are demonstrated’.

Aboriginal men have demonstrated such responsibility and have offered their commitment to genuinely engage in a partnership on this most disturbing and destructive of issues. They didn’t do so lightly or glibly, and they have acknowledged that it will be hard. They did so out of genuine concern for their communities.

The opportunity to embrace this as the breakthrough moment that creates a new partnership has not been taken for now.

I cannot think of a more devastating example of the gap between commitments made and action taken. It is something that I believe the government would be very wise to address with urgency.

In assessing progress under the new government, the final two issues I have identified are circumstances where there has been inaction in moving beyond the rhetoric of the government; and then those issues on which there has been a lack of thought, yet alone action, on critical elements of reform that are necessary if we are to truly shake up the status quo.

In terms of inaction, I am very concerned by the response to the stolen generations since the Apology.

At present, there are options for compensation for the stolen generations in some states, in some circumstances through various redress schemes. But it is not universal and it is not applied equally. As it stands, whether there is justice for the stolen generations depends on their postcode.

Beyond compensation, the government has been extremely slow to move to address the demand for support services to reunite families and to heal.

Link Ups have very clear performance indicators – reunions of families conducted by the graveside are seen as a failure. As the stolen generations become increasingly frail and aged, adequate funding for Link Ups and for all of the services they deliver remain a pressing and urgent concern.

When I delivered the official response to the Prime Minister to the Apology, on behalf of the Stolen generations, I stated: “let the healing begin”. Yet only limited support for healing services to stolen generations have also come to fruition. There was a national healing forum to progress this convened recently. And so I hope that this will lead to tangible outcomes in the coming months.

And so to the final element of how I assess the first twelve months of the new government. This is those issues which simply don’t seem to be on the agenda or where change is simply not occurring.

Reform of the bureaucracy and the operation of whole of government arrangements for service delivery is the key issue here.

In my view, Fiona Stanley identified these issues perfectly in her speech in this venue last week when she said that Governments are not taking enough responsibility for health and social outcomes in Aboriginal communities, are rarely held accountable for shortcomings in critical services, and fail to treat Indigenous organisations as an important part of the solution.²⁸

Let us remember the words of the Prime Minister in the Apology speech. He stated:

The truth is: a business as usual approach towards Indigenous Australians is not working... We need a new beginning—a new beginning which contains real measures of policy success or policy failure; a new beginning, a new partnership, on Closing the Gap with sufficient flexibility not to insist on a one-size-fits-all approach for each of the hundreds of remote and regional Indigenous communities across the country but instead allowing flexible, tailored, local approaches to achieve commonly-agreed national objectives that lie at the core of our proposed new partnership; a new beginning that draws intelligently on the experiences of new policy settings across the nation...

And yet at the bureaucratic level, what we have seen is business as usual.

What we have seen with the NT intervention is a ‘one size fits all’ approach that lacks the type of flexibility and tailored local approaches that the PM identifies as critical to changing the status quo.

In the second of this speech series – titled ‘Reform’ - I said that:

“the capacity of government to deliver on its commitments is the proverbial ‘elephant in the room’... the new government may not yet have fully realised it, but they have been left with a system for delivering on the government’s commitments to Indigenous affairs and reconciliation that is severely limited in its capacity; that has developed and mutated out of an urgent desire to do better, but which has ignored the evidence in adopting change; and which has become disconnected from the very people it is meant to service.”

I have no reason to change this view after twelve months of the new government.

It is a serious problem and one that will limit progress over the longer term if it is not elevated in priority.

So in summary – we have seen glimmers of the type of boldness that we require to move forward but in the end, a lot of the fundamental problems that existed under the previous government continue to exist and in some instances are not being addressed.

And so, where to from here?

²⁸ ABC Online: Govt rarely accountable on Indigenous concerns:
Stanley, <http://www.abc.net.au/news/stories/2008/11/06/2412659.htm>.

Each of the *Essentials* speeches sets out a series of key elements for moving forward. So I don't intend to repeat those issues here. They have identified a range of essentials that must be addressed. The need for these remains.

Instead I want to identify two further structural issues that we have to come to terms with to change the mindset and to create the 'new beginning' spoken of by the Prime Minister.

The first is about having a seat at the table.

The challenge for the coming eighteen months is to ensure that credible Indigenous representative mechanisms are put into place and are respected by the government.

The development of a national Indigenous representative body is crucial in this regard and requires all the efforts of Indigenous peoples to make it robust.

I simply cannot see the type of change that is needed coming without a high profile, dedicated national representative structure for Indigenous peoples.

If we establish this – progress in addressing the remaining challenges will flow.

Imagine this: for example. A few weeks back as part of the Senate Estimates process, all the agencies were requested to attend a dedicated session on Indigenous affairs so that the departments could all be questioned at the same time and Senators could explore the relationships and responsibilities that are shared between departments.

Imagine if representatives of Indigenous peoples were able to participate in this process and quiz departments about their achievements on Indigenous affairs – not simple their inputs but their outputs and outcomes. To test the quality of their engagement with Indigenous peoples; how robust their inquiry and consultation processes are; and so on.

This is one of the proposals in the issues paper I released earlier this year on options for a national representative body.

That is not the status quo. It is not the old way. But it would send a clear message to government bureaucrats that they are accountable to Indigenous peoples too.

I remain of the view that a new representative body should not have a service delivery role. This is to make clear and unambiguous that government is responsible for how it delivers its programs – not some '*blackfella fall guy*'.

The Prime Minister early on suggested a joint policy commission to obtain a bipartisan perspective on key challenges for Indigenous affairs. With the representative body he should strive for tripartite positions – long term solutions endorsed by both sides of politics working in partnership with Indigenous communities and their representatives.

It is a tall order but the problem of lack of participation and engagement with Indigenous peoples by government is so entrenched and so problematic.

National indigenous representation must be more than an add on, and more than a process by which government simply seeks endorsement of their current activities.

I believe our Prime Minister is up to the challenge – his leadership can change the mindsets of bureaucrats and break through on this essential for social justice.

Related to this is the second challenge: ensuring a role for human rights as part of the architecture in building a new relationship.

If you look back through my concerns and critiques tonight, the failure to act consistently with human rights standards is a recurring issue.

It amounts to bad policy. And it threatens sustainable outcomes.

You simply cannot talk of genuine, robust partnerships without talking about respect for human rights.

There are three main challenges here. First, is to address the lack of protection provided for many basic human rights; second, is to address the vulnerability of the protection that does exist; and third, is to place a focus on human rights education and dialogue.

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

Accordingly, I strongly endorse the calls for a Charter of Rights that can provide comprehensive recognition of human rights consistent with our international obligations as well as remedies where rights have been abused.

A Charter of Rights can also play a vital role in improving the accountability of government by requiring a greater focus and concentration on identifying the human rights implications of policies and legislation when they are formulated.

A Charter of Rights can have a transformative effect in improving the decision making process, It would also hopefully prevent many human rights violations from occurring in the first place.

But there is a second aspect to our current system of legal protection that also needs to be addressed. This is an issue that has very acutely impacted on Indigenous Australians. That is the vulnerability of the human rights protections that do exist in our legal system.

On three occasions in the past twelve years we have seen racial discrimination protections removed solely in relation to Indigenous people by the federal government.

We need to move beyond the situation where governments can 'turn on' and 'turn off' protection against racial discrimination whenever it suits.

This is permitted by our *Constitution* - which allows the federal Parliament to enact laws that racially discriminate against Indigenous peoples – and indeed against any other group based on race.

We need to revise the scope of Section 51(26) of the *Constitution* – the so-called 'races power' so that we clarify that it only permits the making of laws that are *for the benefit of* people of a particular race, There is no place in modern day Australia for legalised discrimination.

But constitutional reform needs to go further than this. It should also unequivocally require Australian governments to ensure equality before the law and non-discrimination on the basis of race in the exercise of all of their powers.

I would also support a new preamble for the *Constitution* that recognises Aboriginal and Torres Strait Islander peoples within the fabric of the nation.

And the final component of this challenge is the provision of human rights education.

Human rights are standards of humanity that are possessed by everyone by virtue of the simple fact that we are all human.

So while a focus on protections and guidance for governments is critical, it is not the whole story. Community education about human rights is one of the missing links in Indigenous policy.

Human rights education is about communities having the information and the confidence to take back control of their own lives – by giving an external frame of reference of what is appropriate and what is not.

I have consistently called for human rights education to accompany other efforts to address violence in communities and to build the strengths of our people and communities.

And so to conclude, I don't offer criticism for the sake of it. I offer it in the spirit of friendship and of robust dialogue that comes with an enduring partnership and relationship.

We still have some way to travel to ensure that the essentials for social justice for Indigenous peoples are locked into place. but we are heading down the right pathway – if only now we can be bold enough and we take that leap of faith into true partnership.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.

8. Building a sustainable National Indigenous Representative Body

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Charles Darwin University ***4 August 2008***

Speech for the AIATSIS Seminar Series - Indigenous Public Policy: Responses from the Ground

I would like to begin today by paying my respects to the Ngunnawal peoples, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us.

Can I also thank Patrick Sullivan and *AIATSIS* for the invitation to speak in this seminar series on the issue of the establishment of a new National Indigenous Representative Body.

I would also like to thank Patrick and his colleagues at the National Centre for Indigenous Studies at the ANU for all their work on the research that contributed to the report I will speak about today.

I recently spoke on this issue, also at *AIATSIS*' invitation, at the 2008 *National Native Title Conference*, in Perth. Some of you may have had the opportunity to be there. I would like to start today by reiterating something I said on that occasion. I said,

Discussions about a *National Indigenous Representative Body* are not a theoretical debate. Nor is it something that is disconnected from the critical issues facing our communities, as some people would have you believe. A National Indigenous Representative Body has to be a fundamental component of the Indigenous policy landscape if we are to make lasting progress in improving the conditions of Indigenous people and our communities.²⁹

The need for a National Indigenous Representative Body is something that is widely agreed upon by both Indigenous people and government.

The new federal government is committed to supporting a National Indigenous Representative Body. In the budget portfolio statement for Indigenous Affairs released as part of the federal budget in May, the Minister for Indigenous Affairs has stated that:

The Government went to the election with a commitment to set up a national representative body to provide an Aboriginal and Torres Strait Islander voice within government. We will soon begin formal discussions with Indigenous people about the role, status and composition of this body.

²⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, Speech on "Sustainable options for Australia's new national Indigenous representative body", Native Title Conference 2008, 4 June 2008, Perth (available at: http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080604_representative_body.html).

They have now commenced a range of consultation processes, to take place over the next four months, in relation to a representative body.

Without proper engagement with Indigenous people, governments will struggle in their efforts to make lasting progress in improving the conditions of Indigenous people and in our communities.

A National Indigenous Representative Body is a fundamental component of any future action if we are to achieve positive change.

Despite the widespread consensus on the need for such a body, there is still considerable divergence on what kind of body this should be? How should it be structured? What kind of membership will it need and how will that membership be determined? What role should it have? How should it be funded? What is its relationship to government and how will it be accountable to Indigenous peoples?

To assist the debates around these issues I have released an Issues Paper on this subject entitled, "*Building a Sustainable National Indigenous Representative Body – Issues for Consideration*".

This research project was carried out following a commitment I made in my *Social Justice Report 2006*. In that report I said that I "will work with Indigenous organisations and communities to identify sustainable options for establishing a national Indigenous representative body". I described the need for such a body to be established as "urgent and compelling."

The Social Justice Commissioner will work with Indigenous organisations and communities to identify sustainable options for establishing a national Indigenous representative body.

The Commissioner will conduct research to establish existing models for representative structures that might be able to be adapted to the establishment of such a body given the urgent and compelling need for such a representative body.

In 2007, I conducted a select tender process and ultimately hired the National Centre for Indigenous Studies at the Australian National University to conduct research. That research, that has been incorporated into this Issues Paper that was released in July 2008, comprised of three questions, namely:

1. First, what lessons can be learned from mechanisms for representing Aboriginal and Torres Strait Islander peoples at the national, State/ Territory or regional level that have previously existed or that are currently in place?
2. What lessons can be learned from mechanisms for representing Indigenous peoples that have been established in other countries? and
3. What options are there for ensuring that a National Indigenous Representative Body is sustainable?

Copies of the Issues Paper can be downloaded from the HREOC website (www.humanrights.gov.au/social_justice/repbody/index.html).

As the Issues Paper is over a 100 pages, I have also produced a shorter 8 page Community Guide. The Community Guide highlights the key findings and questions raised

in the Issues Paper and presents them in a simpler and more accessible form. Copies of the Community Guide are available for you here today and on the website.

The Issues Paper looks at lessons we can learn by looking at other representative mechanisms for Indigenous people that currently exist, or have previously existed, in Australia and overseas.

The final part of the paper also identifies a series of issues that are important to consider in establishing a National Indigenous Representative Body, such as the guiding principles, role and functions, structure and membership, its relationship with governments and parliaments and, of course, funding for such a body.

I should point out that the research does not substitute for broad-based consultation with Indigenous communities. Indeed, the research does not state a preference for a particular model for a representative body – it merely identifies some of the many issues that need to be considered in the formulation of a National Indigenous Representative Body.

The debate on a new National Indigenous Representative Body, which I anticipate will be a rigorous and lively debate, will have to contend with two important dimensions – firstly that of the past and secondly, that of the future.

In terms of the past, a new body will have to deal with the history and legacy left by ATSIC. I think the greatest problem ATSIC faced was that it was ‘blamed’ for the lack of progress in addressing Indigenous disadvantage, despite the simple fact that it did not have many of the responsibilities for service delivery required to achieve this goal. Although the ATSIC review of 2003 did not recommend the abolition of ATSIC, it is important that a new body should not be about reviving ATSIC.

In fact, I see significant benefits for a new National Indigenous Representative Body to not exercise the service delivery responsibilities of government. As for all other Australians, let government be responsible for delivering services to Indigenous citizens. We don’t want to take the blame for second class treatment by government anymore.

So while we can draw on the lessons learnt from ATSIC, we also need to look beyond the ATSIC model as we set out the expectations for a new national Indigenous representative body.

Secondly, in terms of the future, a new representative body will have to operate in a vastly changed environment from when ATSIC existed. This is an environment with:

- Concrete commitments from government to *Closing the Gap*, with a partnership approach at the centre of this process;
- A renewed focus on reconciliation, following from the national Apology to the stolen generations;
- A whole of government system for delivering services to Indigenous people where the primary responsibility resides with mainstream government departments; and
- Significant environmental challenges facing all Australians, and where the traditional knowledge, practices and land use of Indigenous peoples will have a significant role to play in preserving the quality of life of all Australians.

A new National Indigenous Representative Body will also be created within the context of rapid advances internationally in the recognition of the rights of Indigenous peoples – developments which the new Australian Government has indicated it supports and respects.

Most importantly here is the recognition through the human rights treaty committees of rights to effective participation by Indigenous peoples in decision making that affects us. That is, a right to be at the table. And of course, the passage of the Declaration on the Rights of Indigenous Peoples which articulates our rights as Indigenous peoples, including rights to our own forms of organisation, to be engaged with on a basis of mutual respect and good faith by governments.

I would now like to delve in more detail into what were some of the lessons learned from the other models, and what were some of the issues that are identified for consideration in the Issues Paper.

So what are the lessons learnt?

In looking at what lessons we can learn from other models, the research firstly looked at past national Indigenous representative bodies in Australia including:

- The Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCATSI),
- The National Aboriginal Consultative Committee (NACC),
- The National Aboriginal Conference (NAC), and
- The Aboriginal and Torres Strait Islander Commission (ATSIC).

The research identified a number of reasons why these bodies did not work as effectively as they intended, including:

The research identified a number of reasons why these bodies did not work as effectively as they intended, including:

- Not having clearly defined relationships with governments, Indigenous communities and organisations, and other stakeholders;
- Not having clear roles and functions, which meant Indigenous people's expectations were not always met;
- Having too many functions – including advocacy, policy development, program delivery and evaluation – which created conflicting responsibilities;
- A lack of resources – this made it difficult to undertake the full range of responsibilities;
- Difficulty in successfully representing a wide diversity of Indigenous concerns – from urban to remote communities; women, young people, stolen generation members etc.;
- A tension between the expectations of Indigenous Australians for a strong organisation to represent their views and the preference of governments for them to act only as 'advisory' bodies.

Secondly, the Issues Paper looked at a range of national, state/ territory and regional Indigenous representative bodies currently operating in Australia including:

- National peak Indigenous bodies
- Land councils and native title representative bodies
- State/ territory representative and advisory bodies, and the
- Torres Strait Regional Authority.

Each category of bodies illustrated different approaches to structure, what function, membership and the processes for determining membership of the representative body. These are useful to look to when considering what would be the best approach for a new national Indigenous representative body.

Each of these groups of bodies tends to operate within different realms. The peak bodies are predominantly sector based and operate more at the national level.

- The Torres Strait Regional Authority is specific to the Torres Strait islands.
- The land councils and native title representative bodies are based around recognition of land ownership and operate more at the regional level, and
- The recently elected representative group here in the ACT and advisory committees, such as those in South Australia and Victoria and mooted for Queensland, operate more at the state/ territory level.

In terms of government arrangements, there are a number of key governmental bodies that have been formed at the federal level, the most recent of which is the Cabinet Committee on Indigenous affairs – previously known as the Ministerial Taskforce on Indigenous Affairs.

But importantly, the government arrangements for service delivery have largely been mainstreamed into general government departments and shifted focus to the regional level through Indigenous Coordination Centres, shared responsibility agreements and regional partnership agreements.

However, none of these bodies, nor the combination of them, can adequately provide the comprehensive representation that would be met by a National Indigenous Representative Body.

A key lesson that came out of examining these different bodies was that a new National Indigenous Representative Body will need to consider how it relates to each of these existing bodies.

In particular, it became obvious that the new National Indigenous Representative Body will have to consider how to interface with the Torres Strait Regional Authority to ensure Torres Strait Islander participation at the national level, and how to separately include the representation of mainland Torres Strait Islanders in the national body.

Thirdly, the research examined indigenous representation in four other countries, some of which you may be familiar with already:

- The United States' National Congress of American Indians. With a membership of tribe members, this is an independent advocacy group that talks to government on policy development and monitors government policies. It is financially independent.

- Canada's Assembly of First Nations. Its Membership includes all First Nations citizens who elect community representatives to the assembly. It operates as an independent advocacy body, although it is funded by government.
- Sweden's Sami Parliament. As a parallel indigenous parliament, its role is to monitor government rather than providing self-governance. It is both a publicly elected body and a public authority funded by the Swedish Government.
- New Zealand's Māori electorates and dedicated government agencies. Māori electorates provide indigenous representation in the national parliament. There are also a range of government bodies that represent Māori interests, such as the Ministry of Māori Development, the Māori Office Trust, the Waitangi Treaty Tribunal and the Waitangi Treaty Fisheries Commission. These bodies have indigenous members, but not necessarily elected members.

These overseas models operate in different contexts and demonstrate different strengths and weaknesses on issues such as self-governance and the influence they have with government. Interestingly, none of the overseas models performs a service delivery role on behalf of government.

So what are the key issues?

- What should be the guiding principles for such a body?
- What roles and functions should it have?
- What kind of structure will it need?
- How is membership determined?
- What relationship should it have with governments and parliaments at the federal and state/ territory level? And
- How should it be funded?

Both the Issues Paper and the Community Guide go into these in more detail, but for today I want to highlight some of the ideas that have arisen in considering these issues.

Indigenous peoples' vision of what they want from a National Indigenous Representative Body will have a fundamental impact on what the eventual body will look like. Some foundational principles for such a body could include that it have:

- *Legitimacy and credibility* with both governments and Indigenous peoples
- *'Two-way' accountability* - to government and to Indigenous peoples and communities
- *Transparency* - in its operations, membership, elections, policy making and financial processes
- *Representativeness* – such as whether it is truly representative of the diverse range of Indigenous peoples – and I'll come back to this one shortly
- *A consistent and 'connected'* structure – with clear links to Indigenous peak bodies and Indigenous organisations at the state, territory and regional levels, and
- *Independent and robust* advocacy and analysis.

To achieve its goals, a National Indigenous Representative Body could also be expected to:

- Play a leading role in making a new partnership between governments and Indigenous people
- Ensure Indigenous people contribute to and lead policy development on Indigenous issues
- Provide an Indigenous perspective on broader government issues, such as climate change or homelessness
- Be a strong and consistent advocate for the rights of Indigenous peoples
- Ensure proper mechanisms are in place to monitor the performance of governments on Indigenous issues
- Ensure government commitments, such as '*Closing the Gap*' on health inequality etc, are supported by comprehensive, long-term and evidenced-based action plans.

As Indigenous peoples, we need to debate what we see as the ultimate purposes of the representative body.

To me, when we start to consider this issue there are two major factors that we need to think about in detail. The first is, do we want a body that is truly representative of all the different groupings of Indigenous peoples in its composition?

Or do we want a body of 'Indigenous people representing and advocating for the Indigenous nation'?

Let me explain. If it is to be truly representative, this could mean that it has capacity to ensure the representation of stolen generations, traditional owners, youth, Torres Strait Islanders on the mainland and in the Torres Strait, as well as a regional balance and possibly even a tribal/ clan balance. I have not included gender in this list of different groupings for the simple reason that to me, this is a non-negotiable aspect of a representative body – whatever its composition and representative structure, it must have a gender balance to be credible.

The alternative to this is that whatever structure is decided, it then has a responsibility to consult and engage widely with all of the different groups and interests among the Indigenous polity with the effect that the views it puts ultimately 'represent the Indigenous nation'.

These are two different things, and they will have a significant influence on what structure and processes are adopted by a new representative body.

The second major issue is what do we mean by independence? I hear all the time that Indigenous peoples want a representative body that is independent in its operations. But what I don't hear is what this means.

For instance, in some discussions my office has had, a number of commentators and Indigenous peoples have pointed to the example of HREOC as a credible, independent body. This is despite us being government funded and set up under legislation.

We are independent in that government has no capacity to direct our work program or censor our views. It has, however, in the past and unfortunately continues today, to starve us of the funding capacity necessary to most effectively discharge our role.

It is important to note that HREOC has some differences from the ATSIC model – which was also a statutory authority model. The powers of the Minister are much more limited in relation to HREOC than it was with ATSIC, for example.

Ultimately, we need to be very sophisticated in how we address this issue. Ultimately, the representative body will need to be persuasive with both government and Indigenous peoples to be effective. Independence is about the body being able to advocate free from constraints imposed by government and also to operate in a way that is not captured by certain interest groups among the Indigenous population. It will be critical for us to tease out what we mean by independence – what we expect of such independence - as this will have a significant impact on the design and processes of the representative body.

This leads to the next key issue – what are the role and functions of the body?

The body could encompass a wide range of roles and functions from service delivery, policy formulation, monitoring and evaluation, advocacy, research and international advocacy.

The body will need to have an effective balance in roles and functions, without creating too many conflicting responsibilities. In terms of service delivery for example, the body can have a strong impact on program delivery by setting priorities, contributing to planning processes and monitoring government service delivery, but without actually being involved in program delivery. The body could also have a strong impact in undertaking effective advocacy and developing good policy, based on good research.

Personally, I don't support the representative body exercising a service delivery role. Why? Because it is a reality that there is no intention for any government – state, territory or federal, to hand Indigenous people the level of control we would need for this to be effective. The result is that when we take on a piecemeal service deliver role – we get the blame for the failure of the whole of government to not meet its responsibilities.

I see us having a more effective role in having a coordinated process where the role of the rep body is to engage with Indigenous peoples and direct the priorities for service delivery and to identify the key expectations for service delivery.

I see the new representative body as the opportunity for a rigorous accountability system being put into place for government activity – for the first time ever.

In terms of the structure of the body, I would like to highlight two questions which will be important to consider:

- How will the national leadership keep connected with the broad base of Indigenous people and communities at the local and regional level through to the state/ territory and national level? and
- What should the structure of the national body look like?

Some of the ways in which a new National Indigenous Representative Body could engage with Indigenous people, communities and organisations at the regional and state/ territory level, include:

- Formal mechanisms – where the national body draws its members from national, state/ territory or regional representative bodies, holds regular state-wide policy forums or develops other regional-level mechanisms
- Approaches that engage different sectors of the Indigenous community
- Informal processes where Indigenous peoples can have their say, for example at a national congress or forums that bring people together around specific issues.

Equally there are also a number of ways in which a new National Indigenous Representative Body could be constituted, such as:

- Delegates who are nominated by regional and state/ territory levels of the body or by direct election
- A membership-based organisation, made up of communities, organisations or individuals who choose to join
- Involving Indigenous peak bodies, regional or state/ territory based Indigenous bodies or Indigenous service delivery organisations in its activities and decision-making
- Designating positions be allocated to the national body, or specific working groups, to represent particular sectors of the Indigenous community, such as women, stolen generation members, traditional owners, young people or Torres Strait Islanders
- A process of merit selection coordinated by a panel of eminent Indigenous peers
- A combination of these approaches.

We also need to ensure there is a gender balance in the new national body, as well proper participation of young people.

We must also make sure there are appropriate opportunities for the broad-based participation of Indigenous people in the body's decision-making process, while still recognising the need for the body to remain focused, effective and capable of swift action.

To effectively represent the interests of Indigenous Australians, a National Indigenous Representative Body must work closely with all levels of government. The new body could be established as a commonwealth government entity, such as a statutory authority, or as a non-government organisation.

The different options have implications for the level of independence of the body as well as its proximity to government and its capacity to influence government. Such a body needs to build and maintain a closer relationship with government to be effective in its policy advice and review of government performance.

Finally, how the body is funded is critical to its ability to take on the roles and functions that are eventually decided. This could be through government funds, private donations, membership fees and/ or selling products and services, or even through establishing an 'Indigenous future fund'.

The funding base will also be critical in terms of establishing the independence of the representative body. We should fully explore models like an Indigenous future fund as well as charitable status so that a representative body can be funded through a mix of public and private processes. Ultimately, what this will be about will be making the body

‘government proof’ so that the dictates of any particular government cannot destroy the integrity of the representative body with the stroke of a pen and a slash of the budget.

In identifying and discussing such issues, the paper poses a series of questions in relation to each of the issues. The questions have been included to assist in thinking about what factors may need to be considered and decided in determining a new National Indigenous Representative Body. I encourage you to look at these questions, a list of which is also provided at the back of the Community Guide.

To conclude, I have previously made a call to Indigenous people and the federal government, and it’s a call I would like to repeat today:

That a new National Indigenous Representative Body should be funded and begin operating by July next year.³⁰

There is a lot of work to be done if we are to achieve this, and to do so in a manner that ensures a deep engagement with the Indigenous population to ensure that a representative body is *truly* representative and is therefore capable of meeting the needs and aspirations of our communities.

The Commonwealth Government has started a six month process of consultations on a proposed national Indigenous representative body. This includes:

- 17 regional consultations around Australia between 29 July and 1 September 2008.
- A comprehensive mail out to Indigenous organisations informing them about the consultation process and inviting submissions.
- A process for people to lodge written submissions by 19 September 2008.
- A national roundtable meeting of Indigenous leaders in late October 2008.
- Community workshops/ consultations facilitated by the network of 30 Indigenous Coordination Centres and possibly by government business managers in the NT.
- Consultations with peak Indigenous organisations.
- Consultations with state and territory governments. and
- Further testing and refining of a proposed model.

The aim of this process is to allow for widespread engagement with Aboriginal and Torres Strait Islander peoples across the country to gain feedback on the Indigenous community's aspirations and preferred model(s) for a National Indigenous Representative Body.

More information on these government consultation processes is available at the FaHCSIA website:

(www.fahcsia.gov.au/internet/facsinternet.nsf/Indigenous/repbody.htm)

I hope people will engage with that process. And when I say engage I mean either to participate in the consultations to express your views or, if you have problems with the process as established, to raise those issues as well.

³⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner, Speech on “Sustainable options for Australia’s new national Indigenous representative body”, Native Title Conference 2008, 4 June 2008, Perth (available at: http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080604_representative_body.html)

The Issues Paper I have produced is intended to be a resource for both government and Indigenous people to use in the consideration of these issues.

The key questions identified in the Issues Paper, and replicated in the Community Guide, can provide a useful foundation for discussions on the issue.

My hope is that we can establish a National Indigenous Representative Body that engages with the different sections of the Aboriginal and Torres Strait Islander community – be it women, our youth and children, communities in different geographical locations, traditional owners or stolen generations members.

And I hope that a representative body will operate in such a way as to inspire and support our people, while also holding governments accountable for their efforts, so we may ultimately enjoy equal life chances to all other Australians.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you

9. 'Still Riding for Freedom' – An Aboriginal and Torres Strait Islander Human Rights Agenda for the Twenty-First Century

The Charles Perkins AO Memorial Oration 2008 ***University of Sydney, 23 October 2008***

I acknowledge the traditional owners of the land where we are meeting tonight, the Gadigal peoples of the Eora nation. I pay my respects to your elders and to those who have come before us. And thank you to Chicka Madden for your generous welcome to country. Chicka and I spent a term together on the Board of Aboriginal Hostels.

Can I also acknowledge the Perkins family (Eileen, Hetti, Rachel and Adam), and thank Sydney University and the Koori Centre for the great honour and privilege of being invited to address you this evening in memory of a truly great Aboriginal leader and great Australian.

Can I also pay my respects to all of the Aboriginal and Torres Strait Islander students who will graduate tonight. I am also honoured to share this stage with you as we recognise your achievements.

There can be no more fitting legacy for Dr Perkins than to see – every year – an increasing number of our Indigenous brothers and sisters graduate from this esteemed university. We have certainly come a long way from 1965, when Charles Perkins was the lone Aboriginal student graduation ceremony. Thankfully, the graduation of Aboriginal men and women is not such a rarity these days – although I would still like to see a lot more of you!

Some reflections:

We have gathered in this Great Hall tonight to honour and remember Charles Perkins, a man who had the courage to bring Australians together in a quest for equality.

As I considered what I might say about Charlie tonight, it immediately became clear to me that no few well chosen words could sum up his life and his legacy.

Charlie was a proud Arrente man, a scholar, an avid sports fan and footballer, a bureaucrat, an agitator, and a human rights champion.

And if we look back at each of the major developments in Indigenous policy since the 1960s – Charlie was always there. Sometimes he was an outsider breaking down walls and fighting for justice for Aboriginal people. And other times he worked from within the system – but with much the same approach, and almost always with some results.

Be it the freedom ride and the fight for people's rights to swim at the local pool or to go the movies without being cordoned off like second class citizens – right through to the 1967 Referendum, the land rights movement, the building of major institutions such as the Aboriginal Development Commission, the NAC, ATSIC and the Council for Aboriginal Reconciliation – Charlie was there, and always had plenty to say.

If there was injustice – he didn't shy away from it, even if the issue was controversial, or difficult for the majority of Australians to face up to.

In the 2007 documentary 'Vote Yes for Aborigines', Warren Mundine remembered the Charles Perkins of 1967 as an immaculately groomed campaigner – polite, well spoken, dressed in a suit with a thin tie, and 'the shiniest black shoes you've ever seen'.

Yet many people would also clearly remember the anger and passion that Charles brought to so much of his dealings with government throughout his life – from the early years on the freedom ride campaign, to being suspended from his role as a senior public servant for calling the actions of a state government racist, to furiously yelling at John Howard about his refusal to acknowledge the existence of, and apologise to, the Stolen Generations at the Opera House shortly before his passing in the year 2000.

There is no shortage of public achievements by which we can remember Charles Perkins.

But to relegate Charlie's achievements to these memories would fail to capture another important part of his legacy. For Charles was also a role model to all of us, as well as a son, a husband, a father, and a grandfather.

And I think that everyone that has involvement with the Perkins family will know that they all embody Charlie's strength of character and determination. Over the past few weeks, I'm sure that many of you will have been watching Charlie's daughter Rachel's excellent series "The First Australians" - and will agree that the Perkins family continues, today, to contribute powerfully to efforts to change the way that mainstream Australia thinks about the Indigenous peoples of this nation.

Charlie had a tireless dedication to human rights and social justice for Indigenous Australians. And I speak to these issues tonight in his memory.

How far have we come?

In the introduction to Charlie's autobiography 'A Bastard Like Me', Ted Noffs argued that 'it is not too much to say that Charles Perkins is to the Aboriginal population in Australia what *Martin Luther King Jr* was to black people in the United States'.

And like King, at all times, Perkins' vision was one of equality of rights, equality of access, and freedom from discrimination.

But perhaps more than ever, at this time in history, the comparison of King to Perkins is a telling one.

In just two weeks, we may well see the first black candidate elected to the presidency of the United States of America. Today, in the United States, King's dream - that one day a man might be judged not by the colour of his skin, but by the content of his character, seems one step closer to realisation.

But when we look closer to home, and reflect on our own progress in Australia, we see a markedly different picture.

As was the case in America, powerful calls for equal rights were heard in Australia in the 1960s. But despite the gains that we have made, we have hardly any formal human rights protection mechanisms at all.

What I want to do in my remarks tonight, is indicate to you that the gaps in our legal system around human rights protection have a real effect on the opportunities and life chances that Aboriginal and Torres Strait Islander peoples have in Australia today.

In my view, one of the most perverse developments over the past decade has been the bad press that human rights have consistently received in public debate within Australia.

And according to some, it is time to 'get serious' and face up to 'practical issues' facing Indigenous peoples like 'addressing disadvantage' rather than concerning ourselves with issues such as human rights for Indigenous peoples - which after all, are really only symbolic.

But let me put this question to you: is our democracy really working so well for Aboriginal and Torres Strait Islander peoples in the year 2008?

Unlike all other western democracies, in Australia we have no Charter of Rights – not for Aboriginal people, and not for anyone! And as the Northern Territory intervention demonstrates, the commitments that we do have across our society to non-discrimination and to equal treatment for Indigenous peoples are such that many in our society deem it acceptable to simply 'switch off' the protection from racial discrimination when it is expedient to do so.

Unlike Canada, we have no constitutional recognition of the rights and status of our First Nations peoples. In fact, we are distinguished, (and I use that word advisedly!) as perhaps the only country which has a Constitution that permits discrimination against its indigenous peoples on the basis of our race.

Unlike New Zealand, we still have no treaty, or permanent mechanism for the ongoing resolution of land claims through a process of self-determination.

And unlike the vast majority of member states of the United Nations, we have not yet endorsed the Declaration on the Rights of Indigenous Peoples.

Now, if human rights were only symbolic, maybe none of these things would matter very much. If things were fine just the way they were, and we had a system of government where we were well represented, well serviced, and well protected, then maybe we could forget conversations about human rights for Aboriginal and Torres Strait Islander peoples.

But let's look at the reality.

Today in Australia, we see a federal parliament which has no Indigenous members.

We see a system of service delivery to Indigenous peoples – by governments at both the federal and state levels – that struggles to deliver the most basic of services for the benefit of Indigenous peoples.

We see a system with too many bureaucrats who do not see themselves as accountable to Indigenous peoples or as having responsibilities to ensure that Indigenous peoples benefit from their efforts.

We see a system in which the likelihood of an Indigenous person rising to the top of the bureaucracy – like Charlie and his niece Pat Turner did – is unlikely to occur anytime soon - except for a very small number of senior Indigenous bureaucrats in our federal and state governments.

And we see limited engagement with Indigenous peoples in the setting of policy and programs, with no formal mechanism for Indigenous national representation at present, or a formal commitment to self-determination.

I suspect Charlie would have had a lot to say about what we've got in 2008.

But it should be clear to all of us tonight, even without Charlie with us, that we should not be content simply resting on our laurels, and celebrating the gains that we have won.

Tonight, I will argue that there remains a pressing need to question inequality in Australian society, and to question how we protect the most vulnerable among us. And that is why I have titled this oration, '*Still riding for freedom: An Aboriginal and Torres Strait Islander Human Rights Agenda for the Twenty-First Century*'.

I see the next few years as critical in our continued struggle for equality and the recognition of the rights of Indigenous peoples.

There are a few reasons for this.

First, we are at a time of rapid advance in the recognition of Indigenous peoples rights at the international level. The passage of the UN Declaration on the Rights of Indigenous Peoples has provided much momentum throughout the UN system to strive to improve how Indigenous peoples' rights are protected. We can expect that over time this increased focus will place greater expectations and scrutiny on our approach here in Australia – be this through reporting to human rights treaty committees, the universal periodic review processes of the UN Human Rights Council or through changes to global practices for development cooperation.

And second, we have the prospect of renewal with a new federal government that has signalled its intention to enter into genuine partnerships with Indigenous peoples. This has been a central feature of commitments made to *Close the Gap* in Indigenous health inequality and was very strongly articulated by the Prime Minister in his Apology speech back in February this year.

Of course, the actions are still needed to match the rhetoric of the new government.

So tonight, I want to consider the following main elements of a human rights agenda for Indigenous peoples in Australia:

- Changing how we conceive of poverty so it is treated as a human rights issue;
- Addressing the lack of formal legal protection of human rights in our legal system; and
- Providing due recognition to the First Nations status of Indigenous Australians.

Conceptualising poverty as a human right

As the starting point, let me start with a deceptively complex issue that I see as one of the most profound challenges that we face in Australia today. This is the challenge of redefining how we conceive of poverty so it is squarely addressed as a human rights challenge.

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

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

And it also makes it too easy to disguise any causal relationship between the actions of government and any outcomes, and therefore limits the accountability and responsibilities of government.

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

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

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

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

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

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

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

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

government's efforts over the past five years. That is, government policy that is applied to Indigenous peoples as passive recipients.

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

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

We have started to see some change with the Close the Gap process. As you may know, the Rudd government, and all Australian Governments through COAG, have agreed to a series of targets to be achieved over the next five to ten years to start the process to close the gap in health status and ultimately in life expectancy, as well as across a range of other measures.

In March this year, the Prime Minister, the Leader of the Opposition, Ministers for Health and Indigenous Affairs, every major Indigenous and non-Indigenous peak health body and others signed a *Statement of Intent* to close the gap in health inequality which set out how this commitment would be met. It commits all of these organisations and government, among other things, to:

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

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

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

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

Addressing the lack of formal legal protection of human rights in our legal system

A different but no less formidable or important challenge is addressing the lack of formal protection of human rights in our legal system.

There are two main challenges here – first, is the lack of protection provided for many basic human rights; and the second, is the vulnerability of the protection that does exist.

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

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

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

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

This is an issue that ultimately affects all Australians. Although usually, the consequences of such a lack of protection impacts the most on those who are the most vulnerable and marginalised in our society – such as Indigenous peoples.

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

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

Accordingly, I strongly endorse the calls for a Charter of Rights that can provide comprehensive recognition of human rights consistent with our international obligations as well as remedies where rights have been abused.

I see another equally important role for a Charter in our society.

A Charter of Rights can play a vital role in improving the accountability of government by requiring a greater focus and concentration on identifying the human rights implications of policies and legislation when they are formulated. This is through mechanisms such as statements of compatibility and human rights analyses of proposed new laws.

By putting human rights issues front and centre and making bureaucrats and politicians explicitly consider what the human rights impacts of their laws and policies are, a Charter of Rights can have a transformative effect in improving the decision making process. It would also hopefully prevent many human rights violations from occurring in the first place.

We have lacked appropriate coverage and protection of human rights for too long, and a Charter of Rights is long overdue. This will be a key issue for debate in the coming year and so I hope that we will finally take this important step and close the 'protection gap' that currently exists for all Australians.

But there is a second aspect to our current system of legal protection that also needs to be addressed. This is an issue that has very acutely impacted on Indigenous Australians.

That is the vulnerability of the human rights protections that do exist in our legal system.

On three occasions in the past twelve years we have seen racial discrimination protections removed solely for Aboriginal people by the federal government. This has been in relation to the exemption from heritage protection laws of the Hindmarsh Island bridge in South Australia; the Wik ten point plan amendments to the *Native Title Act* – provisions that remain in breach of our international treaty obligations I might add – and the exemption from the Racial Discrimination Act of the NT intervention legislation.

Our existing system works like this.

States and territories are bound by the protections of the *Racial Discrimination Act* (or *RDA*) by virtue of the *Australian Constitution*. This provides that state and territory laws will be invalid to the extent that they are inconsistent with a valid law of the federal Parliament – such as the *RDA*.

In both the *Hindmarsh Island* and *Wik* situations, the federal Parliament authorised state and territory governments to introduce discriminatory laws against Indigenous peoples. Because this was authorised by a federal law that was more recent than the *RDA*, the more recent law prevailed and the discrimination was legally valid. The fact that it was legally valid does not change the fact that it is in breach of our international obligations so you then also have an inconsistency between our domestic legal system and international obligations.

Notably, if the state or territory levels of government initiated such discriminatory provisions themselves then they would be found to be constitutionally invalid – as happened in Queensland in 1985 when they sought to prevent Eddie Mabo from pursuing his claims of native title by acquiring all native title rights for the Crown, and in Western Australia in 1995 when the WA government similarly sought to extinguish all native title rights across the state and replace it with a lesser right. So the states and territories cannot initiate racially discriminatory actions themselves.

The *Wik* ten point plan amendments also involved the Commonwealth discriminating against Indigenous peoples themselves – not just through the states and territories. As the *RDA* is an ordinary enactment of the federal parliament the principle of parliamentary sovereignty applies to it – meaning that laws that are made at a later time will override the *RDA* to the extent of any inconsistency.

So the states and territories must comply with the *RDA*, unless the federal Parliament exempts them. But the federal Parliament is not so bound and may legally discriminate against Indigenous peoples if it so chooses - so long as it does so through the passage of a law that the Parliament has the constitutional power to enact in the first place. And this is where some of you may also be very surprised. For our *Constitution* permits the federal Parliament to enact laws that racially discriminate against Indigenous peoples – and indeed against any other group based on race.

This is how. Section 51(26) of the *Constitution* – the very provision that Charlie and others fought so hard to amend through the 1967 Referendum – enables the federal Parliament to make special laws for the peoples of a particular race. This has been interpreted by the

High Court as meaning any special laws – including ones that are discriminatory. Surely this is a perversion of the intention of the 1967 referendum.

We need to revise the scope of Section 51(26) of the *Constitution* – the so-called ‘racism power’ so that we clarify that it only permits the making of laws that are *for the benefit of* people of a particular race. There is no place in modern day Australia for legalised discrimination.

But I also see a need for constitutional reform to go further than this.

For example we could consider inserting into the *Constitution* a new provision that unequivocally provides for equality before the law and non-discrimination. Article 26 of the *International Covenant on Civil and Political Rights* provides a starting point for what such protection might say. It reads:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It is arguable that this protection would have addressed the serious deficiencies of the NT intervention upfront and ensured that actions were more fairly and better targeted from the outset.

I would also support a new preamble for the *Constitution* that recognises Aboriginal and Torres Strait Islander peoples within the fabric of the nation. However, I must say that the preamble is secondary to the above issues and should not be used as an alternative to efforts to ensure that one day we have a Constitution that does not permit racial discrimination.

So a major challenge that we face is how we ensure that our commitment to non-discrimination and equality, and to human rights more generally, is not something that is swept aside whenever it gets difficult or inconvenient or when it is expedient to simply override this protection.

And on that note, let me comment briefly on the NT intervention.

I have been a strong critic of aspects of the intervention – particularly the way that it has resorted to racially discriminatory measures to achieve its purposes. This is something that I have said from day one will undermine all the positive efforts being undertaken. I also firmly believe that measures to protect children can and should be undertaken, but that they can be achieved without discrimination.

I think that the Review Team on the intervention was spot on in identifying the fundamental flaw of the intervention when they state in their report that:

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.^[1]

Measures that deny people basic dignity will never work. As the NT Review report notes, it is this singular problem that has undermined the effectiveness of the intervention and has broken down the trust and relationship between government and Indigenous peoples across the Territory.

Now I was very interested to read the editorial in *The Australian* this past weekend. It read:

You would have to search hard in today's Australia to find anyone who does not support the broad principles of equality before the law or who does not abhor racial discrimination...

At the time (the intervention was introduced), *The Weekend Australian* supported the suspension on the grounds that the rights of Aboriginal children to a decent life free of fear trumped every other consideration...

It is now clear, however, that the *RDA* can be safely reinstated without hindering the intervention. The reinstatement of the act deserves bipartisan support.

My *Social Justice Report 2007* provides a ten point plan on how to achieve this. That plan also shows how the Minister for Indigenous Affairs could today remove a significant portion of the discriminatory provisions of the intervention legislation through using her existing administrative powers – without recourse to Parliament.

The Rudd government must act decisively on this issue to ensure that the intervention legislation is consistent with human rights and is non-discriminatory. A failure to do so will fundamentally contradict the commitments that the government has made – including those to Close to Gap and to work in genuine partnership with Indigenous communities.

But there are two comments by *The Australian* that I think illustrate this deeper problem of human rights protection in Australia that I have been discussing.

The first is the suggestion that you can ‘turn on’ and ‘turn off’ protection against racial discrimination whenever it suits. And the second is that the only way children could be protected in the NT when the intervention was introduced was by racially discriminating against them and against their families and communities.

I am deeply troubled by the suggestion that there may be circumstances where protections against racial discrimination can be removed for some ‘greater good’. It raises the unsettling question of who decides what the greater good is? Misplaced best intentions have been something Indigenous peoples have suffered for a long time in this country.

I also reject totally the suggestion that resort to discrimination was necessary in order to protect children. I also totally reject any suggestion that at the time of the intervention we faced a crossroads of choosing between either racially discriminating or protecting women and children. This was a choice that was set up by design and it was, and still is, avoidable. The only sound policy choice is one where children are protected *and* are not discriminated against as well.

The *Convention on the Rights of the Child* itself is explicit in Article 2 that discriminatory measures can never be justified on the basis that they further other human rights and that there needs to be a consistent approach in how all human rights are applied.

Nevertheless, the recommendations of the Northern Territory Emergency Response (NTER) Review Report now provide an opportunity to refocus the Federal Government's efforts from an emergency to community development approach in improving the lives of Northern Territory Aboriginal children.

There is a major challenge for communities across the Northern Territory, and Australia, to demonstrate that they understand and accept that women and children have rights to be safe and free from violence. And there are many examples that show that this is in fact the view of Indigenous people in the NT.

For example, in July there was a major men's health summit on the lands of Charlie's people – the Arrente – which provided clear leadership from Indigenous men about addressing violence and abuse. The outcomes of that Summit are contained in the *Inteyerrkwe Statement*. It reads:

We the Aboriginal males... gathered... to develop strategies to ensure our future roles as grandfathers, fathers, uncles, nephews, brothers, grandsons, and sons in caring for our children in a safe family environment that will lead to a happier, longer life that reflects opportunities experienced by the wider community.

We acknowledge and say sorry for the hurt, pain and suffering caused by Aboriginal males to our wives, to our children, to our mothers, to our grandmothers, to our granddaughters, to our aunties, to our nieces and to our sisters.

We also acknowledge that we need the love and support of our Aboriginal women to help us move forward.

To assist, the men also called for community based violence prevention programs that are specifically targeted at men; the establishment of places for healing for Aboriginal men; resources for rehabilitation services for alcohol and drug problems; and better support for literacy and numeracy for Aboriginal men and linking of education to local employment opportunities. I am unaware whether there has been any response to this call - despite the request that there be so by September 2008.

I have every confidence that Indigenous communities – supported by government – can own the problems that exist in their communities and more so, that they want to own the problems.

For governments, you have to stop seeing Indigenous people as problems and recognise our role as the solution brokers to the problems that debilitate us.

For Aboriginal communities the challenge is to seize back your role in determining your futures; determine what measures are needed in your community to ensure the basic functioning of the community.

Recognising the first nations status of Indigenous Australians

Finally, the other piece of the puzzle to ensure adequate human rights protection in Australia revolves around the recognition of the status of Indigenous Australians as the first peoples of this land.

We have never come to terms with what this means in a comprehensive or holistic manner. Instead, we have dealt with those aspects of our shared history that have emerged from time to time – such as native title – by treating them as impediments and seeking to overcome them.

In the coming years we will jointly face other major challenges that threaten our way of life as Australians – such as access to water resources and dealing with the impacts of climate change. The traditional knowledge of Indigenous peoples and the traditional lands and waters and custodianship practices of our peoples will have a key role to play in dealing with these issues. So they provide another opportunity to consider the important place of Indigenous peoples within our society.

We should address these issues alongside outstanding issues relating to the colonisation of the country and outstanding issues of land justice, reparations and addressing the entrenched inter-generational poverty and trauma that still exists.

The United Nations Declaration on the Rights of Indigenous Peoples will provide us with an important tool in how we could move forward in this way.

The Declaration highlights that we have failed Indigenous peoples for centuries and that one of the contributing factors for this has been the lack of support for Indigenous peoples' collective characteristics. This is not about special status, it is about maintenance of identity and ensuring that cultures that – in most countries – are vulnerable to exploitation and are marginalised, are not lost with the full human tragedy that goes with that loss.

It is a very positive, aspirational document that sets out ambitions for a new partnership and relationship between Indigenous peoples and the nation states in which they live. For example:

- It affirms that indigenous peoples make a unique contribution to the diversity and richness of civilizations and cultures, and promotes cultural diversity and understanding.
- It explicitly encourages harmonious and cooperative relations between States and indigenous peoples, as well as mechanisms to support this at the international and national levels.
- It is based upon principles of partnership, consultation and cooperation between indigenous peoples and States. So for example, Article 46 requires that every provision of the Declaration will be interpreted consistent with the principles of justice, democracy, respect for human rights, non-discrimination and good faith.

I don't recall seeing any public discussion of the Declaration that talks about it in this positive light or that recognises that it is fundamentally a document about partnership. Instead, the public discussion has been much more alarmist and negative in its tone.

Over the coming months and year we will see the government take two important steps for appropriate recognition of Indigenous peoples. First, they will formally endorse the UN Declaration as an appropriate framework to guide the relationship with Indigenous Australians. And second, they will support the establishment of a national Indigenous representative body.

Both will provide impetus to reconfiguring the relationship with Indigenous peoples based on respect for our cultures and with a view to entering genuine partnerships with us. This

will challenge many Australians. And it will provide the opportunity for us to deal with longstanding, unfinished business.

Conclusion

I have offered my comments tonight to both provoke and to stimulate. And hope that I have offered them constructively and in a spirit of reconciliation – and to honour the legacy of the great Charlie Perkins.

When asked about his legacy in 1994, Charles Perkins said:

I'm here today, gone tomorrow, and I've only just played a small role like other Aboriginal leaders do, but we're only passing, you know: ships in the night really. And where the answer lies, is with the mass of Aboriginal people, not with the individuals.

Addressing the continuing non-recognition of our rights, and dealing with the consequences that flow from that non-recognition, is the true challenge of our age. And I urge you tonight to recognise that the journey that Charlie undertook, that great ride to Freedom, still continues today.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you